

BEFORE THE
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY) DOCKET NO.
) 05-0159
)
Proposal to implement a competitive)
procurement process by establishing)
Rider CPP, Rider PPO-MVM, Rider)
TS-CPP, and revising Rider PPO-MI.)
(Tariffs filed February 25, 2005))

Springfield, Illinois
August 29, 2005

Met, pursuant to notice, at 10:00 A.M.

BEFORE:

MR. MICHAEL WALLACE, Administrative Law Judge

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SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
Ln. #084-002710

I N D E XWITNESSESDIRECT CROSS REDIRECT RECROSS

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PROCEEDINGS

JUDGE WALLACE: Pursuant to the direction of the Illinois Commerce Commission, I now call Docket Number 05-0159. This is the matter of Commonwealth Edison Company and proposed tariffs.

May I have appearances for the record, please, starting with Commonwealth Edison?

MR. HANZLIK: Foley and Lardner by Paul Hanzlik, Glenn Rippie, John Rogers and John Ratnaswamy, 321 North Clark Street, Chicago, Illinois, appearing for Commonwealth Edison Company.

JUDGE WALLACE: Staff?

MR. FEELEY: Representing Staff of the Illinois Commerce Commission, John C. Feeley, John Reichart, Carmen Fosco and Carla Scarsella.

JUDGE WALLACE: And then let's just start on this end.

MR. GIORDANO: For the Building Owners and Managers Association of Chicago, and I will refer to us as BOMA throughout the proceeding, Patrick Giordano, Paul Neilan and Christina Pusemp of the law firm Giordano and Neilan, LTD. Do you want our

1 address, too?

2 JUDGE WALLACE: No, let's just get the address
3 -- so you have that list?

4 REPORTER: Yes.

5 MR. LAKSHMANAN: For Dynegy, Inc., Joe
6 Lakshmanan.

7 MR. ROSEN: Citizens Utility Board, Larry Rosen
8 and Robert Kelter.

9 MR. TOWNSEND: On behalf of Constellation New
10 Energy, Inc., Peoples Energy Services Corp.,
11 MidAmerican Energy Company, Direct Energy Services
12 Corp., and US Energy Services -- I am sorry, US
13 Energy Savings Corp., the law firm of DLA Piper
14 Rudnick Gray Cary US, LLP, by Christopher J.
15 Townsend.

16 MR. AUGSPURGER: For Morgan Stanley Capital
17 Group, Inc., and J. Aron and Company, McDermott,
18 Will and Emery, LLP, by Thomas J. Augspurger and
19 Gregory K. Lawrence.

20 MS. HEDMAN: People of the State of Illinois by
21 Susan Satter and Susan Hedman from the Office of the
22 Attorney General.

1 MR. GOLDENBERG: On behalf of the Cook County
2 State's Attorney's office, Allan Goldenberg and
3 Marie E. Spicuzza, assistant state's attorney.

4 MR. MOORE: John Moore, Environmental Law and
5 Policy Center.

6 MR. ROBERTSON: Eric Robertson and Conrad
7 Reddick on behalf of the Illinois Industrial Energy
8 Consumers.

9 MR. STAHL: On behalf of Midwest Generation,
10 David Stahl, firm of Eimer, Stahl, Klevorn and
11 Solberg, Chicago.

12 MR. BRADFORD: Also on behalf of Commonwealth
13 Edison, Darryl Bradford and Stacy O'Brien and Rick
14 Bernet.

15 MR. FLYNN: Christopher Flynn of Jones Day on
16 behalf of the Ameren companies.

17 MR. GOLLOMP: Lawrence Gollomp on behalf of the
18 United States Department of Energy.

19 JUDGE WALLACE: Anyone else wishing to enter an
20 appearance? All right. Thank you. Let the record
21 reflect no other appearances at today's hearing.

22 Mr. Rippie sent out a schedule late Friday

1 night and, Mr. Rippie, is this not quite complete?
2 Or it is complete.

3 MR. RIPPIE: I believe, Your Honor, that it is
4 complete for week one. There are some remaining
5 pieces of information that we need to discuss with
6 respect to the second week, but this should be final
7 and complete with respect to week one.

8 JUDGE WALLACE: And what's the holdup on week
9 two then?

10 MR. RIPPIE: There are efforts being made to --
11 I hope they are done but I can't guarantee it -- to
12 swap a couple of witnesses to accommodate
13 out-of-state travel and to allow attorneys that have
14 blocks of witnesses to put them on in blocks so that
15 they can travel down and back together. I think
16 week two is pretty close, but that's the remaining
17 hope.

18 JUDGE WALLACE: It is my understanding that the
19 Commerce Commission is going to have oral argument
20 in the NICOR gas rate case on the 8th in Chicago and
21 my information as of this morning is that that is
22 still going ahead as planned. I don't know if that

1 impacts anyone here or not. If it does, you know,
2 please let Judge Jones and I know so that we can --

3 MR. RIPPIE: Some of the moves that have been
4 made in the last few days have been designed to
5 accommodate requests by other parties that had
6 potential conflicts with that oral argument, and we
7 have, including by moving a ComEd witness, attempted
8 to, as much as is physically possible by the
9 constraints of the day, move witnesses around to
10 accommodate those requests.

11 JUDGE WALLACE: All right. Thank you.

12 We have Clark, Moler and Juracek today,
13 Mr. Hanzlik?

14 MR. HANZLIK: That is correct.

15 JUDGE WALLACE: Would those three witnesses
16 please stand and raise your right hands.

17 (Whereupon the Witness
18 was duly sworn by Judge
19 Wallace.)

20 JUDGE WALLACE: Thank you. Be seated.
21 Mr. Hanzlik?

22 MR. HANZLIK: Thank you, Your Honor. Our first

1 witness would be Mr. Frank Clark and I would ask him
2 to take the stand at this time.

3 FRANK M. CLARK, JR.

4 called as a Witness on behalf of Commonwealth Edison
5 company, having been first duly sworn, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HANZLIK:

9 Q. Mr. Clark, could you please state your full
10 name for the record.

11 A. Frank M. Clark, Jr.

12 Q. Mr. Clark, by whom are you employed?

13 A. Commonwealth Edison.

14 Q. Mr. Clark, I have previously handed to you
15 a copy of your testimony, Exhibit 1.0, along with
16 exhibits to that testimony, 1.1 to 1.6. Do you have
17 that testimony and those exhibits before you now?

18 A. Yes, I do.

19 Q. Mr. Clark, is that testimony which you have
20 prepared for submission in this proceeding today?

21 A. Yes, it is.

22 Q. And are the exhibits that are referred to

1 in your testimony the exhibits that appear attached
2 to that testimony as Exhibits 1.1 through 1.6?

3 A. Yes, they are.

4 MR. HANZLIK: Your Honor, we had previously
5 filed Mr. Clark's testimony with the associated
6 exhibits. It was given e-Docket number 55889 at the
7 time of filing.

8 Q. Mr. Clark, are there any changes or
9 corrections which you wish to make in your prepared
10 testimony?

11 A. No.

12 Q. If I were to ask you those same questions
13 today, would your answers be the same as appear in
14 your prepared testimony, Exhibit 1.1?

15 A. Yes, they would.

16 MR. HANZLIK: Your Honor, at this time I would
17 move into evidence Exhibit 1.0, the testimony of
18 Mr. Clark, along with the attached exhibits, 1.1
19 through 1.6.

20 JUDGE WALLACE: Any objection?

21 MS. HEDMAN: Yes.

22 MR. GOLDENBERG: Yes.

1 MS. HEDMAN: Susan Hedman for People of the
2 State of Illinois. We wish to restate our objection
3 to the references of the Post-2006 Initiative in
4 Exhibit 1.0 which were allowed, Exhibit 1.6 and all
5 of the Exhibits 1.1 through 1.5, on the grounds as
6 set forth in detail in our motion in limine which we
7 filed on August 23 with the Cook County State's
8 Attorney, CUB and the Environmental Law and Policy
9 Center, and which Your Honor denied.

10 For the record we renew our objection to
11 admission of this material on the grounds that the
12 Commission issued a workshop preamble at the start
13 of the Post-2006 Initiative. It stated, "In order
14 to facilitate free and open discussions, the
15 stakeholders wish to assure that statements made,
16 positions taken and documents and papers provided by
17 the stakeholders in the Post-2006 Initiative process
18 will not be used by the stakeholders in any
19 substantive litigation, including administrative
20 proceedings before the Illinois Commerce Commission,
21 the Federal Energy Regulatory Commission and other
22 federal, state or local governmental authorities."

1 For the record, we note that because the
2 people through the Office of the Attorney General
3 and other parties relied on this promise on a
4 condition of their participation in the workshops,
5 the Commission is estopped from considering material
6 related to the workshops, particularly
7 characterizations of abuse of the participants
8 individually or collectively in this or any other
9 docket. And Commonwealth Edison and other parties
10 are barred from submitting Post-2006 Initiative
11 materials in this or any other proceeding.

12 The People relied, apparently to their
13 detriment, on the promises made in that preamble.
14 Thank you, Your Honor.

15 JUDGE WALLAC: Mr. Goldenberg?

16 MR. GOLDENBERG: Allan Goldenberg on behalf of
17 the Cook County State's Attorney's office. Again,
18 we would renew our objections as raised in the joint
19 motion that we had filed previously with the
20 Attorney General's office. In addition, I would
21 also like to point out and have Your Honor consider
22 that the exhibits and materials are hearsay. We

1 have a hearsay objection. We have a foundation
2 objection looking to the personal knowledge of the
3 witness that we would like to probe on cross
4 examination. And then in addition to that,
5 anticipating the sort of Wilson versus Clark experts
6 allowed to rely on hearsay, we would be arguing that
7 various portions of the testimony are not the type
8 of materials that an expert would rely on in
9 Illinois, and we would be objecting for that basis
10 also.

11 JUDGE WALLACE: All right. Thank you.

12 MR. ROSEN: Your Honor, CUB joins in on the
13 objection as well.

14 JUDGE WALLACE: Any other objections?

15 MR. MOORE: The Environmental Law and Policy
16 Center also joins it.

17 JUDGE WALLACE: Okay. Would you like to
18 respond, Mr. Hanzlik?

19 MR. HANZLIK: Very briefly. The Commonwealth
20 Edison Company submitted a detailed response on
21 August 26 to this motion. I will not repeat the
22 arguments contained in that response unless Your

1 Honor would like us to do that. We believe that
2 this is not a well-founded motion and the objections
3 misstate the law in Illinois as well as the purpose
4 for which these documents, which are public
5 documents, have been offered in this case. We
6 object to the motion and believe these exhibits
7 properly admissible.

8 JUDGE WALLACE: All right. I will reserve
9 ruling until after cross. Does anyone have cross of
10 Mr. Clark?

11 MS. HEDMAN: I do, Your Honor.

12 MR. HANZLIK: Your Honor, may I just move into
13 evidence -- will you reserve ruling also on the
14 admissibility of his testimony as well as the
15 exhibits?

16 JUDGE WALLACE: Yes.

17 MR. HANZLIK: Thanks.

18 JUDGE WALLACE: Ms. Hedman?

19 MS. HEDMAN: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MS. HEDMAN:

22 Q. Good morning, Mr. Clark. My name is Susan

1 Hedman. I am with the Office of the Attorney General
2 and I represent the People of the State of Illinois
3 in this docket.

4 A. Good morning.

5 Q. Mr. Clark, on lines 5 and 6 of page 1 of
6 your prefiled testimony you have testified that you
7 are currently executive vice president and chief of
8 staff of Exelon Corporation and president of
9 Commonwealth Edison Company, is that correct?

10 A. Yes, it is.

11 MS. HEDMAN: Your Honor, may I --

12 JUDGE WALLACE: I am sorry, I was wondering. I
13 thought we had a microphone over there but we don't.
14 Let's go off the record a minute.

15 (Whereupon there was
16 then had an
17 off-the-record
18 discussion.)

19 JUDGE WALLACE: Back on the record. Whatever
20 you do, don't trip over the cords.

21 MS. HEDMAN: Your Honor, I have a cross exhibit
22 that I would like to mark. Perhaps you can advise

1 me what procedure you would like me to use for that.

2 JUDGE WALLACE: If you would hand it to the
3 court reporter.

4 MS. HEDMAN: Could we make a determination as
5 to how many copies we need of everything? I want a
6 show of hands of who expects a copy.

7 (Whereupon AG Cross
8 Exhibit 1 was marked
9 for purposes of
10 identification as of
11 this date.)

12 JUDGE WALLACE: Let's go back on the record.
13 Ms. Hedman.

14 MS. HEDMAN: Thank you, Your Honor.

15 Q. Mr. Clark, you have a document that has
16 been marked as AG Cross Exhibit 1. Does this
17 organizational chart accurately depict Exelon
18 Corporation's corporate structure?

19 A. Yes.

20 Q. And I take it that in your role with
21 Commonwealth Edison you are currently president of
22 the entity that appears on the lower right-hand side

1 of the chart labeled Commonwealth Edison Company, is
2 that correct?

3 A. That is correct.

4 Q. And in your role with Exelon Corporation I
5 take it that you are executive vice president and
6 chief of staff of the entity that appears at the top
7 of the chart which is labeled Exelon?

8 A. That is also correct.

9 Q. So then I take it that Exelon has three
10 major subsidiaries, is that correct?

11 A. The organizational chart is correct and
12 Exelon has the delivery company, the business
13 service company, and the generation business.

14 Q. And Commonwealth Edison Company is an
15 operating company that is part of Exelon Energy
16 Delivery Company, is that correct?

17 A. Which is a holding company, yes, that is
18 correct.

19 Q. And Exelon Business Services is a service
20 company that provides business services?

21 A. Right, a shared service organization, that
22 is correct.

1 Q. Including some legal services to
2 Commonwealth Edison?

3 A. That is correct.

4 Q. And does the third subsidiary, Exelon
5 Ventures, include Exelon Generation Company?

6 A. That is correct.

7 Q. And does Exelon Generation Company
8 currently sell electricity to Commonwealth Edison
9 pursuant to a power purchase agreement?

10 A. Yes, it does.

11 MS. HEDMAN: Your Honor, I move that AG Cross
12 Exhibit 1 be admitted into evidence.

13 JUDGE WALLACE: Any objection?

14 MR. HANZLIK: No objection.

15 JUDGE WALLACE: AG Cross Exhibit 1 is admitted.

16 (Whereupon AG Cross
17 Exhibit 1 was admitted
18 into evidence.) .

19 BY MS. HEDMAN:

20 Q. Mr. Clark, if Exelon's proposed merger with
21 Public Service Electric and Gas occurs, is your
22 position with ComEd expected to change from that of

1 president to chairman?

2 A. That is correct.

3 Q. And if Exelon's proposed merger with Public
4 Service Electric and Gas occurs, are you expected to
5 become executive vice president and chief of staff
6 of the merged entity?

7 A. That is correct.

8 Q. And that's to be called Exelon Electric and
9 Gas?

10 A. That is correct.

11 MS. HEDMAN: I would like to mark another
12 exhibit.

13 (Whereupon AG Cross
14 Exhibit 2 was marked
15 for purposes of
16 identification as of
17 this date.)

18 Q. So, Mr. Clark, you are now looking at the
19 document that has been marked as AG Cross Exhibit 2.
20 Does this organizational chart accurately depict
21 your expected -- oh, my goodness, I have handed out
22 the wrong exhibit. I beg your pardon, Your

1 Honor. (Whereupon AG Cross Exhibit 3
2 was marked for purposes
3 of identification as of
4 this date.)

5 MS. HEDMAN: Your Honor, may I show you this
6 and then the attorney for Commonwealth Edison and
7 then the witness? We are having trouble locating
8 these.

9 JUDGE WALLACE: All right.

10 MR. HANZLIK: May I just ask, will you make
11 copies?

12 MS. HEDMAN: I will when we get a break.

13 Q. So, Mr. Clark, you are now looking at a
14 document that is labeled AG Cross Exhibit 3. Does
15 this organizational chart accurately depict your
16 expected role at Exelon Electric and Gas?

17 A. Yes, it does.

18 MS. HEDMAN: Your Honor, I move that AG Cross
19 Exhibit 3 be admitted into evidence.

20 JUDGE WALLACE: Any objection?

21 MR. HANZLIK: No objection.

22 JUDGE WALLACE: AG Cross Exhibit Number 3 is

1 admitted.

2 (Whereupon AG Cross Exhibit 3 was

3 admitted into

4 evidence.)

5 BY MS. HEDMAN: Thank you, Your Honor.

6 Q. A moment ago I distributed a document that
7 had been marked as AG Cross Exhibit 2. Does that
8 organizational chart accurately depict the planned
9 corporate structure of Exelon Electric and Gas,
10 including the position of Commonwealth Edison in
11 that structure if the merger occurs?

12 A. It matches my latest recall, yes.

13 MS. HEDMAN: Your Honor, I move that AG Cross
14 Exhibit Number 2 be admitted into evidence as well.

15 JUDGE WALLACE: Any objection?

16 MR. HANZLIK: No objection.

17 JUDGE WALLACE: AG Cross Exhibit 2 is admitted.

18 (Whereupon AG Cross

19 Exhibit 2 was admitted

20 into evidence.)

21 JUDGE WALLACE: Ms. Hedman, was the document
22 entitled Commonwealth Edison Company Notice of

1 Holding Company Merger Transaction, was that part of
2 --

3 MS. HEDMAN: I didn't ask that that be
4 admitted. In case there was a question about the
5 providence of the two organizational charts, I
6 wanted to distribute that.

7 Q. Mr. Clark, in connection with your
8 employment at Exelon, do you have a compensation
9 package that includes Exelon stock options?

10 A. Yes, I do.

11 (Whereupon AG Cross
12 Exhibit 4 was marked
13 for purposes of
14 identification as of
15 this date.)

16 Q. Mr. Clark, I believe you have a document
17 that has been marked as AG Cross Exhibit 4 in front
18 of you. Does this exhibit consist of 12 SEC Form 4s
19 which have been filed with the US Securities and
20 Exchange Commission on your behalf since the start
21 of 2005 to report changes in beneficial ownership of
22 securities, specifically Exelon Corporation?

1 A. Yes, it does.

2 Q. And do all of the transactions reported on
3 these forms involve securities obtained through your
4 participation in the Exelon long term incentive plan
5 or other forms of compensation from Exelon,
6 particularly deferred compensation?

7 A. Yes.

8 Q. Mr. Clark, I would like you to turn your
9 attention to the third form for AG Exhibit 4.

10 A. I am sorry, look at the third page or what
11 are you referring to?

12 Q. The third form that appears. It is the
13 form that reports transactions that occurred on
14 August 5 or, pardon me, August 1, the third page of
15 this exhibit.

16 A. Yes, okay.

17 Q. Does this form report a transaction in
18 which you exercised an option for 31,500 Exelon
19 shares at \$29.75 per share on August 1, 2005, and
20 then sold 31,500 shares at \$52 to 53.51 per share on
21 that same day?

22 A. Pursuant to a predetermined plan that was

1 put in in advance, maybe a year earlier, the answer
2 is yes.

3 Q. Thank you. And so subject to check can you
4 confirm that by exercising that option on August 1
5 that the total -- the total price for those shares
6 was \$937,125 and that you sold those shares at the
7 market on August 1 for \$1,657,853, netting you over
8 \$700,000?

9 A. I can't do the math in my head. Assuming
10 that the math is correct, I am going to have to say
11 yes.

12 Q. Now, let's look at one more form, the
13 transaction shown on the form 4 that is second from
14 the end in this exhibit.

15 A. Second from the end?

16 Q. The form that is second from the end. It
17 is for transactions dated May 2. And does that form
18 report a transaction in which you exercised an
19 option for 31,500 shares at \$29.75 per share on May
20 2, 2005, and then sold that same number of shares at
21 an average price of \$49.50 per share on that same
22 day?

1 A. Yes.

2 Q. And so again subject to check, can you
3 confirm that by exercising that option on May 2 that
4 the total purchase price for those shares was again
5 \$937,125 and that you sold those shares into the
6 market on May 2 for \$1,559,250, netting you over
7 \$600,000?

8 A. As I answered before, pursuant to the
9 prearranged plan, those options were sold on the
10 date that was chosen six months or a year earlier,
11 yes.

12 MS. HEDMAN: Thank you. I won't burden the
13 record by going through any more of these
14 transactions. Your Honor, I move that AG Cross
15 Exhibit 4 be admitted into evidence.

16 MR. HANZLIK: No objection.

17 JUDGE WALLACE: AG Cross Exhibit 4 is admitted.

18 (Whereupon AG Cross
19 Exhibit 4 was admitted
20 into evidence.)

21 MS. HEDMAN: Your Honor, in light of your
22 earlier ruling denying our motion in limine relating

1 to statements about the Post-2006 Initiative, I
2 would like to ask Mr. Clark a few questions about
3 his testimony on the Post-2006 Initiative. However,
4 as a preface to those questions, for the record I
5 wish to restate and renew our objection to the
6 admission of that material, and we would like to
7 stipulate that we are not waiving our objections by
8 asking these questions.

9 JUDGE WALLACE: All right.

10 BY MS. HEDMAN:

11 Q. Mr. Clark, in lines 178 to 179 of page 8 of
12 your testimony, you are discussing the Post-2006
13 Initiative procurement working group and you state
14 that, quote, Initially the group discussed the
15 attributes needed by a post-transition procurement
16 process, unquote, is that correct?

17 A. That is correct.

18 Q. Mr. Clark, did you attend any meetings of
19 the procurement working group?

20 A. I did not personally go to the workshops.
21 I directed the ComEd employees who participated in
22 the five workshops. However, there were frequent

1 reports back to me and they were acting under my
2 direction.

3 Q. Thank you. Turning your attention to ComEd
4 Exhibit 1.4, the final report of the procurement
5 working group, could you please turn to the letter
6 of transmittal for the report at the start of
7 Exhibit 1.4?

8 A. Yes.

9 Q. Is this the letter from David Vites, a
10 recorder of the procurement working group,
11 transmitting the advice of the procurement working
12 group to the ICC?

13 A. Yes, it is.

14 Q. Please go to the second page of Mr. Vites'
15 transmittal letter and read aloud the first sentence
16 at the top of that page.

17 A. I am sorry, what do you want me to read?

18 Q. The first sentence on the second page of
19 Mr. Vites' transmittal letter.

20 A. "Subsequent to the groups' completion of
21 the pro and cons consensus documents for all
22 assigned scenarios it considered, modified and

1 adopted a document called "Procurement Consensus
2 Attributes." Do you want me to continue reading?

3 Q. That's fine. So in fact based on that
4 sentence, isn't it true that the list of so-called
5 procurement consensus attributes was developed
6 subsequent to all of the other lists of pros and
7 cons contained in the final report of the
8 procurement working group?

9 A. It is my understanding that the actual
10 consensus items occurred at the end of the workshop
11 process and it was a result of getting all the
12 stakeholders around the table to begin to go down
13 the line and agree or disagree to specific issues
14 that were a part of the workshop discussion.

15 Q. You just used the phrase "all the
16 stakeholders." Do you know how many people were in
17 attendance at the procurement working group meeting
18 when the list of attributes was finalized?

19 A. I don't. I do not.

20 Q. Do you know how many ComEd and Exelon
21 employees, consultant and attorneys attended the
22 final procurement working group when that list of

1 attributes was finalized?

2 A. I don't know the number of participants at
3 the final workshop, ComEd or otherwise. I know that
4 all the stakeholders had an equal opportunity to be
5 there.

6 Q. Would it surprise you if the number of
7 ComEd and Exelon employees, consultants and
8 attorneys in attendance at the final procurement
9 working group meeting at which the list of
10 attributes was finalized exceeded the total number
11 of representatives of all the other stakeholder
12 representatives?

13 A. No.

14 Q. Now, turning your attention to lines 155
15 through 158 on page 7 of your direct testimony.

16 A. I am sorry, repeat that, please.

17 Q. That's lines 155 through 158 on page 7 of
18 your direct testimony, you state that the Commission
19 sponsored an extensive series of presentations,
20 seminars and stakeholder workshops to examine, among
21 other things, the future of electric utility
22 regulation in Illinois, electric markets in Illinois

1 and the region, the design of rates and means of
2 procuring supply to serve customers in the Post-2006
3 environment, is that correct?

4 A. That is correct.

5 MS. HEDMAN: Mark that as AG Cross Exhibit 5.

6 (Whereupon AG Cross
7 Exhibit 5 was marked
8 for purposes of
9 identification as of
10 this date.)

11 Q. Mr. Clark, you are looking at a document
12 that has been marked as AG Cross Exhibit 5. Is this
13 a program or a presentation on September 21, 2004,
14 to the Commission sponsored in connection with the
15 Post-2006 Initiative?

16 A. Yes.

17 Q. Did you attend this event?

18 A. I don't really remember. I can't remember.

19 Q. Do you know whether anyone from Exelon or
20 ComEd spoke at this event?

21 A. Well, John Loropalos (sp) is listed on the
22 cover so my assumption would be that he spoke. And

1 my assumption is generally speaking if I were in
2 town I would go to an event where John was speaking.
3 But I don't honestly remember this one.

4 (Whereupon AG Cross Exhibit 6 was
5 marked for purposes of
6 identification as of
7 this date.)

8 Q. Mr. Clark, you are looking at a document
9 that has been marked AG Cross Exhibit 6. Is this an
10 invitation to a Post-2006 Roundtable Speakers --

11 MR. HANZLIK: The document is what it is. She
12 hasn't established that he has any knowledge of this
13 particular piece of paper.

14 JUDGE WALLACE: Well, I think she is going to.
15 So go ahead.

16 MS. HEDMAN:

17 Q. Let me just ask you, to identify this
18 document, is this an invitation to a Post-2006
19 Roundtable Speakers Dinner on September 20, 2004, at
20 a restaurant called 437 Rush?

21 A. Yes, it appears that it is.

22 Q. Did you receive one of these invitations?

1 A. I am sure I did.

2 Q. Did you attend the Post-2006 Roundtable
3 Speakers Dinner?

4 A. I don't know.

5 Q. Do you know whether any other ComEd or
6 Exelon employees, consultants or attorneys attended
7 this dinner?

8 A. I don't know.

9 Q. Do you know whether ComEd or Exelon
10 provided any financial support for the Post-2006
11 Speakers Dinner either directly or through the
12 Illinois Energy Association?

13 A. I don't know.

14 Q. Do you know whether ComEd or Exelon
15 provided any financial support for any other
16 Post-2006 Initiative events?

17 A. We are a member of the Illinois Energy
18 Association that you just described and we pay dues
19 into their organization. If that organization
20 sponsors something, there would be indirect support.
21 But I have no personal knowledge of whether we
22 supported these events.

1 Q. Didn't ComEd or Exelon provide lunch for
2 workshop participants at several of the ICC
3 Post-2006 Initiative meetings?

4 A. I don't know.

5 Q. Have there been any instances that you do
6 know of since February 2004 when the Commission
7 kicked off the Post-2006 Initiative in which ComEd
8 or Exelon paid for or otherwise provided an ICC
9 Commissioners' meal?

10 A. The only -- the only thing I know is that
11 we are members of the Illinois Energy Association
12 and that's a trade group association. And they may
13 have done something. I don't know. That would have
14 been the only way that I would be aware of it, that
15 we would have made a contribution indirectly that
16 would have resulted in some type of reimbursement or
17 covering expenses associated with that. Any kind of
18 event or seminar would be Post-2006 Initiative; the
19 trade association may have done something. I
20 personally don't know.

21 Q. But you do know that ComEd or Exelon did
22 not directly pay for or otherwise provide an ICC

1 Commissioners' meal?

2 A. Oh, not to my knowledge, no. I have no
3 knowledge of them doing that. But I am going to
4 keep emphasizing we are a member of the trade
5 association and that trade association has
6 workshops, seminars. They do a lot of things
7 associated with this industry. So we pay dues. And
8 conceivably they sponsored something like that.
9 Personally, no.

10 MR. ROSEN: Your Honor, can I interrupt just
11 for a second? I am having a little problem hearing
12 the witness. I know he doesn't have a microphone,
13 but he could speak up. The attorneys on this end
14 might have a better --

15 JUDGE WALLACE: I agree, Mr. Rosen. Let's take
16 a seven-minute break and we will see.

17 MS. HEDMAN: And, Your Honor, just let me say I
18 have no further questions for this witness.

19 JUDGE WALLACE: Oh, okay.

20 (Whereupon the hearing
21 was in a short recess.)

22 JUDGE WALLACE: Let's go back on the record. I

1 was going to just mention this red light here, we
2 have an intranet here at the Commission and we can
3 broadcast the hearing on our intranet. It is on
4 basically for our staff who would want to listen in.
5 So if for some reason something confidential comes
6 up, let me know so I can turn that switch off.

7 Did anyone else have cross of Mr. Clark?

8 MR. GOLDENBERG: I do.

9 JUDGE WALLACE: Go ahead.

10 MR. GOLDENBERG: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. GOLDENBERG:

13 Q. Allan Goldenberg, A-L-L-A-N
14 G-O-L-D-E-N-B-E-R-G, with the Cook County State's
15 Attorney's office. I would like to start out by why
16 ComEd is here today. Did ComEd file a tariff with
17 your name on it at the Illinois Commerce Commission?

18 A. I don't know which one you are referring to
19 but if you have my name on a tariff, the answer is
20 yes.

21 Q. So you are the Frank Clark that is on the
22 tariff?

1 A. That is correct.

2 Q. Thank you. Do you know what the status is
3 of the tariffs?

4 A. The tariffs that are filed as part of this
5 case?

6 Q. Yes.

7 A. That is exactly what these hearings are
8 going to be about.

9 Q. Correct, but they are suspended right now
10 until we resolve the hearing, is that correct?

11 A. Yes.

12 Q. Now, leaving any legal issues aside for
13 later, did anybody require ComEd to file these
14 tariffs or did you choose this course of action on
15 behalf of the company?

16 A. We chose this course of action pursuant to
17 the outcome of the process that has been under way
18 in Illinois for the last year or year and a half.

19 Q. I am not asking why. You just chose this
20 course of action, is that correct?

21 A. That is correct.

22 Q. Com Ed could have requested the ICC open a

1 general docket, examining various procurement
2 methods, had it deemed that to be the proper course
3 of action, yes or no?

4 A. That -- I can't answer that with a yes or
5 no and answer you accurately. May I explain?

6 Q. No. Your counsel can on redirect ask you.
7 What I am asking you is, could ComEd have opened a
8 general docket asking the Commission to examine a
9 variety of procurement matters?

10 MR. HANZLIK: I will object to the question to
11 the extent it calls for a legal conclusion as to
12 what may be appropriate in the Commission's rules
13 under the Public Utilities Act.

14 JUDGE WALLACE: Objection overruled.

15 A. Yes.

16 Q. On page 4 of your direct testimony,
17 starting at around line 93 and continuing through
18 page 5, you describe your understanding of the --

19 A. I am sorry, could you give me those lines
20 again?

21 Q. Sure, it is page 4, starting at around line
22 92. You describe your understanding of the major

1 features and goals of the restructuring law, and on
2 page 5 at lines 102 through 106 you cite Section
3 16-101A(d) and you point out that the Act to promote
4 the development of an effectively competitive
5 electricity market that operates efficiently and is
6 equitable to all customers. Is that just one part
7 of the legislative findings of the Act and not the
8 complete finding?

9 A. That is correct.

10 Q. Further, would you agree that there are
11 other findings? For example, doesn't the rest of
12 the section that you partially quoted from
13 5/16-101A(d) include insuring consumer protections
14 are in place?

15 A. That is correct.

16 Q. On page 5 on lines 106 through 107 of your
17 direct you also note that the Act permitted
18 qualified competitive suppliers to enter and compete
19 in the Illinois retail market. Do you believe that
20 the Act -- do you believe that this refers to both
21 suppliers for residential and small business
22 customers?

1 A. Yes.

2 Q. Are you aware of any competitive supplier
3 currently actually providing service to residential
4 or small commercial customers anywhere in the ComEd
5 service territory? Keep in mind I am talking
6 actually providing service.

7 A. As opposed to the two that have not?

8 Q. Correct.

9 A. Then the answer would have been that there
10 are none.

11 Q. Are you aware of when the first provider
12 received approval from the Illinois Commerce
13 Commission to serve residential and small commercial
14 customers?

15 A. Please restate that.

16 Q. Are you aware of when the first provider
17 received Illinois Commerce Commission approval to
18 serve residential and small commercial customers in
19 the ComEd service territory?

20 A. I really don't recall the date. It is
21 relatively recent, but I don't recall the date.

22 Q. To the best of your knowledge it was this

1 summer?

2 A. If you know what it is, then state it. I
3 will assume it is correct. I don't know.

4 Q. Does one of the other legislative findings
5 talk about all customers will be able to have
6 sufficient information to make informed choices
7 among suppliers?

8 A. I believe that's correct.

9 Q. But to the best of your knowledge for
10 residential and small commercial customers that
11 doesn't exist up until this point in time?

12 A. Well, no, I don't agree with that. If I
13 might explain?

14 Q. No. I just ask that the witness answer the
15 question, Your Honor.

16 A. I do not agree.

17 Q. Clearly, rates are something that are of
18 concern to consumers. You note on page 5, turning
19 to lines 109 to 111 of your testimony, that the
20 restructuring law reduced ComEd's residential base
21 rate in two steps by 20 percent. You don't seem
22 very reassuring when you note on page 15 of your

1 direct, and that's at lines 339 to 342, that ComEd
2 does not mean that the cost of electricity that
3 ComEd and its customers require will go down
4 compared to today. In the face of rising prices
5 most supply rates have been frozen for nearly a
6 decade and residential base rates have been frozen
7 at a level 20 percent below that in effect in '97.
8 What do you expect rates to be for residential
9 customers in January 2007?

10 A. I don't know. I expect them to be higher
11 than they are today.

12 Q. What analysis has the company done with
13 respect to the impact of the auction on residential
14 rates that you remember aware of?

15 A. In terms of an actual quantitative
16 analysis --

17 Q. Of the actual number.

18 A. Of the actual number, I am not aware that
19 we can do that. There are market forces that we
20 don't really control that will drive the price of
21 the commodity. What we are attempting to do is put
22 in an inflation process and that process will

1 provide in my judgment an opportunity to pass
2 through the lowest possible cost for the commodity
3 as a result of the competitive process.

4 Q. But ultimately you have no idea what the
5 generation component that's going to get flowed
6 through in January 2007 as you sit here today?

7 A. I can't accurately tell you that because we
8 haven't had an auction, we haven't established a
9 market price. Anything I say will be speculative on
10 our part.

11 Q. Do you think rates will go down for
12 residential customers in January 2007?

13 A. No, sir, I do not.

14 Q. Is there any limit in your proposal on how
15 high residential rates can go as a result of the
16 auction?

17 A. Repeat that for me, please.

18 Q. Sure. Is there any limit in your proposal
19 on how high residential rates can go as a result of
20 the auction?

21 A. Well, there are some limits, yes. I think
22 that --

1 Q. In your proposal, your proposal has got a
2 cap somewhere? It says when rates get too high, we
3 are over. In your proposal. I am not talking about
4 the law. I am just talking numbers.

5 A. Are you referring to the proposal with the
6 procurement problem?

7 Q. Yes, ComEd's package that they delivered to
8 the Commission and proposed for procurement. Is
9 there any limit on how high the number can go?

10 A. That proposal in and of itself does not
11 provide an absolute -- it doesn't provide a limit as
12 we currently don't know what the outcome will be.

13 Q. Can you identify in your proposal what
14 consumer protections are there if the auction fails
15 to obtain a reasonable price?

16 A. Well, I think the greatest consumer
17 protection is that the Commission can reject the
18 auction.

19 Q. Turning to the ownership of electric power
20 generation assets, does ComEd own any power
21 generation assets currently?

22 A. We own no gas, oil or nuclear power plants.

1 I am trying to recall, we may have a small amount of
2 wind power that's on the ComEd books.

3 Q. In an Exelon press release dated August 5,
4 2005, it noted when talking about some of the
5 successes, and I will quote, "Our success is
6 attributable to many things, including dramatic
7 improvements in our nuclear and other operations and
8 rigorous financial discipline, said Rose. But in a
9 very real sense our success is competition success.
10 Over the past five years we have worked tirelessly
11 to promote wholesale competition and to implement
12 the mandate of our state policymakers. The evidence
13 is increasingly clear that our shareholders, our
14 customers, and our employees are all benefitting as
15 a consequence, and we believe that our impending
16 merger with PSEG will continue that success." Do
17 you agree with that statement?

18 A. If that's a direct quote from Mr. Rose, I
19 would agree with it.

20 Q. And who is Mr. Rose for the record?

21 A. Mr. Rose is chairman of the board of Exelon
22 Corporation of which ComEd is a wholly-owned

1 subsidiary.

2 Q. I tend to agree with my bosses, too, most
3 of the time. Exelon's nuclear business has been one
4 of the company successes, right?

5 A. That is correct.

6 Q. More specifically, do you currently have
7 the third largest nuclear fleet in the world?

8 A. I actually don't know if we have the third
9 largest in the world. I know we have the largest in
10 the United States.

11 Q. Would you agree, if I told you that the
12 Exelon internet site at some place indicated August
13 28, 2005, that you currently have the third largest
14 nuclear fleet in the world, that would be a correct
15 statement on the website?

16 A. If it is on our website, I would assume
17 that it is correct.

18 Q. Does it represent approximately 20 percent
19 of the US nuclear industry's power capacity?

20 A. I don't know that. I know that we are a
21 significant percentage. Twenty percent sounds
22 reasonable.

1 Q. Has the nuclear fleet achieved an average
2 capacity factor of 93.4 percent in 2004 and was this
3 the fourth year in a row that the capacity factor
4 was more than 92 percent? And again this
5 information is coming from the Exelon web page on
6 August 28, 2005, the power generation section.

7 A. Well, I am going to assume that you took
8 that directly from our website and you are quoting
9 it correctly and the our website is accurate. That
10 means that it is accurate.

11 Q. To the best of your knowledge the numbers I
12 related are correct?

13 A. Subject to the missive I just stated, yes.

14 Q. How about subject to your checking and if
15 they are incorrect, get them back?

16 A. I would certainly agree under those
17 circumstances.

18 Q. Do you know what the capacity factor for
19 the nuclear side of the company was in '97 when you
20 started the transition?

21 A. My recall is it would have been probably
22 even the very high 40 percent or the low 50

1 percentile. I don't recall exactly.

2 Q. So we are doing a little more than twice as
3 good now in 2005 as we were when we started the
4 transition in 1997, is that correct?

5 A. Yes, that was from competition.

6 Q. I am not asking why. I am just asking is
7 that a correct statement. You are doing a little
8 more than twice as good now?

9 A. They have improved substantially, yes.

10 Q. And that's more than twice as good, going
11 from 40 something to 90 something?

12 A. I am unwilling to say twice as good because
13 I don't know the numbers precisely. But certainly I
14 would say substantially.

15 Q. Exelon is required to file various reports
16 at the Securities and Exchange Commission, is that
17 correct?

18 A. That is correct.

19 Q. Some of these reports are AK, 10Gs and a
20 variety of other things to keep all the Securities
21 and Exchange Commission and the public aware of
22 what's going on in the company as required by

1 various security laws, is that right?

2 A. That is correct.

3 Q. If you are losing money based on a
4 regulatory environment, would this be something that
5 would normally be disclosed?

6 A. Yes.

7 Q. Have you in any filings since 1997 reported
8 losses on the sale of power to ComEd?

9 A. I think I understood your question. Would
10 you mind repeating it for me?

11 Q. Have you in any filing since 1997 with the
12 Securities and Exchange Commission reported losses
13 through the sale of power to ComEd, and that's
14 Exelon through its generation subsidiaries to ComEd?

15 A. I am not certain. I just can't recall how
16 the power transaction, which is subject to the
17 purchase power between Exelon and ComEd, that
18 portion of the load that they serve, I cannot tell
19 you I can recall exactly how that is reported.

20 Q. You noted on page 6 of your direct
21 testimony at lines 139 and 140, "As the Commission
22 knows, ComEd divested of all its generation assets

1 during the transition period permitted by the
2 restructuring law." Did Illinois require ComEd to
3 divest of all its generation assets?

4 A. It was all voluntary.

5 Q. As a result of this divestiture where has
6 ComEd been obtaining the majority of its power for
7 its customers from?

8 A. A combination of two principle sources,
9 Midwest Generation and ExGen and the market.

10 Q. You would agree that ComEd has a
11 responsibility to obtain power for residential
12 customers in Illinois, wouldn't you?

13 A. For those customers who have not switched,
14 yes, switched to an alternate supplier.

15 Q. And as you stated previously in your
16 testimony, there is no residential customer in the
17 ComEd service territory who even has switched?

18 A. I am not aware of any. I will -- you are
19 talking strictly residential?

20 Q. Residential.

21 A. Not commercial.

22 Q. Residential.

1 A. All right.

2 Q. All right no one has?

3 A. I am not aware of any residential customers
4 who have switched. The only reason I am not saying
5 I totally agree is some things are done that I just
6 don't know about.

7 Q. Somebody could have put solar panels up and
8 gone on a grid. I am talking in general.

9 A. In general I would agree with you.

10 Q. What actions had ComEd taken at the time it
11 divested of the plants to insure residential
12 customers continue to receive reasonable rates for
13 its power during the transition?

14 A. Well, I think a number of things occurred
15 at that time. One, we had purchase power agreements
16 with Midwest Gen. I can't tell you exactly the
17 label on it but it is somewhere around 8 to 10,000
18 megawatts, I would think. That's about a little
19 less than half a load. We had purchase power
20 agreements with our own ExGen, Exelon nuclear, for
21 about another, say, 9,000 megawatts. And we had had
22 through our power team organization contractual

1 agreements with suppliers from other parts of the
2 country.

3 Q. So you used your best efforts to insure
4 that residential customers would receive reasonable
5 rates during the transition period, is that correct?

6 A. Yes, that is correct.

7 Q. And the transition period was originally,
8 if you are aware, not scheduled to run to 2007, is
9 that correct?

10 A. That is correct.

11 Q. Do you remember when it was supposed to
12 expire originally, the year?

13 A. Yeah, I believe December 31, 2004.

14 Q. And then that was extended by Illinois law?

15 A. By Illinois law.

16 Q. To January of 2007, is that correct?

17 A. To December 31, 2006.

18 Q. Okay. And as a result of that extension
19 did you take steps to insure that residential
20 customers would again receive reasonable rates
21 between that sort of second leg of the transition?

22 A. The answer is yes. We continued up through

1 the sources that I just identified and others, but
2 the principle source could not be identified with
3 the power agreements that took us out through the
4 end of the new transition period which ended up in
5 2006.

6 Q. Is there anything that you are aware of
7 that prevented you from taking steps to insure
8 through those agreements that residential customers
9 would continue to be protected past January 1 of
10 2007, for example, through the use of an option or
11 other contractual arrangement?

12 A. Well, the answer is yes and I can give you
13 only a partial answer. The real answer is on how
14 the market operates. There are other ComEd
15 witnesses who will be testifying later today,
16 including Bill McNeil, Betsy Moler and others. I
17 can tell you, and this is strictly a partial answer,
18 the purchase power agreements that we have in place
19 now do all end at the end of 2006.

20 What ComEd has been attempting to do is to
21 meet its obligation to provide reliable electricity
22 at reasonable cost to our customers is to

1 participate in any and every forum where this debate
2 has been on going for the last year and a half,
3 including the Illinois General Assembly, including
4 the Illinois Commerce Commission, and of course we
5 have done internal work to determine the best means
6 to procure power in the future. I drafted and
7 signed the letter to the proposal that you have got
8 before you with regard to the process.

9 Q. But other than that you have taken no
10 action in the market to secure anything like an
11 option to extend a purchase power agreement?

12 A. As I indicated, the answer to your question
13 is I think we have done everything that we could
14 prudently do.

15 Q. My question is, did you seek to obtain an
16 option to extend the purchase power agreements at
17 any point to protect yourself or residential
18 customers beginning in January 1, 2007? Is there an
19 option?

20 A. Again, in the testimony of Betsy Moler, you
21 understand that she will help you.

22 Q. I am not asking why. I ask that the

1 witness be directed to answer the question. It is
2 fairly simple. Either when they negotiated the
3 purchase power agreements they sought an option to
4 extend them under certain terms or they didn't?

5 JUDGE WALLACE: Can you answer the question,
6 Mr. Clark?

7 THE WITNESS: I can answer the question if I
8 can explain my answer.

9 MR. GOLDENBERG: I would object. Either there
10 is an option or there is not an option.

11 THE WITNESS: Well, we couldn't violate the law
12 so I guess there isn't an option.

13 MR. GOLDENBERG: I would object to they
14 couldn't violate the law and ask that part be
15 stricken.

16 JUDGE WALLACE: Overruled.

17 BY MR. GOLDENBERG:

18 Q. On page 11 of your testimony again you are
19 talking about the purchase power agreements and at
20 one point you said it would be the best means of
21 achieving the goals of restructuring and ensuring
22 stable and reasonable rates for Illinois customers.

1 What analysis did you do to support the conclusion
2 that in January of 2007 rates would be reasonable?

3 A. What line are you reading? I was looking
4 where you are reading. I think are you referring to
5 line 257.

6 Q. Well, I started on 257 and 260. I am
7 trying to see if I can find the quote. It is 257
8 through 260.

9 A. And can you restate the question for me,
10 please?

11 Q. When you say it would be the best means of
12 achieving the goals of restructuring, insuring
13 stable and reasonable rates for Illinois consumers,
14 what analysis did you do to support the conclusion
15 that rates would be reasonable beginning in January
16 1, 2007?

17 A. I interpret the 1997 Illinois restructuring
18 law to be a strong advocate of the competitive
19 marketplace as the best way for procurement of the
20 supply after the transition period has ended. And
21 in that regard I focused on the best way that
22 Commonwealth Edison could identify with meeting that

1 objective under the Illinois restructuring law.

2 Q. How about if I get more specific then.

3 Would a ten percent increase in the cost of
4 generation be reasonable in your opinion in January
5 2007?

6 A. Well --

7 Q. Yes or no?

8 A. That does not lend itself to a yes or no
9 answer but I can explain if given the opportunity.

10 MR. GOLDENBERG: Judge, I would object to an
11 explanation at this point. I am just asking him
12 would a ten percent increase in the cost of
13 generation be reasonable. It is either reasonable
14 or it is not reasonable.

15 MR. HANZLIK: He already said he can't answer
16 the question yes or no.

17 JUDGE WALLACE: I am sorry, you are requesting
18 that he answer it?

19 MR. GOLDENBERG: I am asking him yes or no
20 would a ten percent increase in the cost of
21 generation be reasonable beginning in January of
22 2007.

1 JUDGE WALLACE: And his answer was he couldn't
2 answer it yes or no. So let's go on.

3 BY MR. GOLDENBERG:

4 Q. What percentage increase in your opinion
5 would be reasonable in January of 2007?

6 A. Well, I can give the same answer. There
7 are several carts. On the supply side of the cart
8 as you understand we are only weaving or we are only
9 purporting to pass through to our customers the cost
10 of supply. There is no return on equity added on to
11 that. There are no add ons. It is whatever the
12 market price will ultimately be, that will be a
13 strict pass through. So that's why I have
14 difficulties struggling with your request.

15 Q. Are you saying the sky is the limit then?

16 A. No, I am not.

17 Q. Is 20 percent reasonable?

18 A. I can't speculate.

19 Q. Is 30 percent reasonable?

20 A. Same answer.

21 Q. Forty percent reasonable?

22 MR. HANZLIK: Your Honor, I think he has

1 answered this question to the best of his ability.

2 MR. GOLDENBERG: I am trying to get at what
3 point the witness thinks it would be unreasonable.

4 Q. Are you saying at no point -- no percentage
5 point would be unreasonable based on your experience
6 and expertise?

7 A. Based on my experience and given the
8 subjective judgments, is it reasonable or not that
9 the price of major commodities has gone up, far more
10 gas and auto, the drivers, the cars, the commodity
11 prices go up. But things that are not controlled by
12 any one company. So I can't tell you what's
13 reasonable. I can tell you that we will do the best
14 that we can to participate in a process that will
15 keep those costs as low as they could possibly be
16 before they are passed through to our customers.

17 Q. On page 12 of your direct testimony at
18 lines 288 to 290 you refer to the ComEd auction
19 proposal as a state of the art competitive
20 procurement approach that will continue the progress
21 that is made in Illinois to develop an effectively
22 competitive electricity market?

1 A. Yes.

2 Q. Yet isn't this approach relatively new in
3 the United States in terms of using this particular
4 type of auction in the electricity generation area?

5 A. I don't know how you define new.

6 Q. Was New Jersey the first market to test
7 this approach in the United States?

8 A. I honestly don't know, but New Jersey is
9 one of the places that we looked at and other
10 states.

11 MR. GOLDENBERG: Judge, if the witness doesn't
12 know, that seems to be the end of the answer.

13 Q. Are you aware of an attempt to use this
14 type of auction in Ohio?

15 A. I am aware of the New Jersey reverse
16 auction being in the state of New Jersey.

17 Q. Are you aware of them attempting to use a
18 model based on that in the state of Ohio?

19 A. I know that they bid into an auction
20 process. Whether that models New Jersey's or not, I
21 cannot tell you. But there are witnesses who will
22 follow me who have studied this in great detail.

1 Q. I understand that. I am just asking
2 generally are you aware of that?

3 A. Generally I am aware that Ohio put in place
4 an auction process.

5 Q. And are you aware of whether that resulted
6 in Ohio ending up with a price that was ultimately
7 passed onto Ohio ratepayers?

8 A. I think there were mixed reviews on that
9 initial auction, but I am not the auction expert. I
10 can also tell you as I stated earlier, one of the
11 benefits of the auction that was supposedly one of
12 the safeguards is the Commission has the authority
13 to reject it.

14 Q. And are you aware that in Ohio that the
15 regulated rate was actually lower and the auction
16 rate was ultimately not used? Are you aware of
17 that?

18 A. I am not an expert on Ohio.

19 Q. So you are not aware that they ultimately
20 didn't use the rates? Not asking why, but.

21 A. Yeah, I think I did hear that.

22 Q. On page 16 of lines 367 to 370 of your

1 testimony you mentioned an upcoming ComEd rate case
2 by noting, "As discussed in more detail by other
3 witnesses ComEd will shortly file a general rate
4 case that will, among other things, propose retail
5 service rates that incorporate the market values and
6 supply costs realized through the auction process."
7 When will ComEd be filing that rate case that you
8 are referring to in your testimony?

9 A. This week.

10 Q. What rates will be subject to that case?

11 A. Our distribution, our distribution and
12 service tariffs and ultimately pass through for the
13 cost of supply.

14 Q. What percentage of an increase in rates
15 will you be proposing in the rate case?

16 A. There will be a single digit and if you
17 want to come back and ask later, if I have that
18 number available, I will give it to you. Because I
19 know it is a single digit across the board for
20 residential customers.

21 MR. GOLDENBERG: I would just ask at some point
22 when the witness is able to verify the number that

1 he put it in the record some time today.

2 JUDGE WALLACE: When will you know, Mr. Clark?

3 THE WITNESS: I will check with folks when I
4 get off the stand and see if I can get a number to
5 you.

6 JUDGE WALLACE: Thank you.

7 BY MR. GOLDENBERG:

8 Q. In your opinion what impact will the rate
9 case have on the auction proposal?

10 A. I am not sure I understand the answer to
11 your question.

12 Q. I am just asking in your opinion what
13 impact this rate case that you are doing may or may
14 not have, if any, on this auction proposal?

15 A. Well, we will attempt when we file our rate
16 case to demonstrate the revenue requirement based on
17 continuing to provide a high quality of delivery
18 service and maintain our infrastructure in northern
19 Illinois. Those distribution costs are separate and
20 apart from the office pass through costs that will
21 come from supply. So the rate case in and of itself
22 in my judgment has no real impact on the outcome of

1 the auction, if that's what you are asking. In
2 other words, the numbers resulting from the auction
3 will be market price numbers which are intended to
4 be passed through our customers with no additional
5 add ons.

6 Q. Again, I know other people in your case are
7 here to sort of manage the technical details, and
8 given my limited knowledge of economics I can
9 clearly be sympathetic here to a lot of them, you
10 know, minute details. But wouldn't you agree that
11 it is important for a bidder in a generation auction
12 to ultimately know the sort of net effect on, you
13 know, the end bill for purposes of trying to figure
14 out migration and who is going to lead based on the
15 overall bill, so that would be important to know the
16 different components before you went into a
17 generation auction?

18 A. No.

19 Q. You don't think it is relevant?

20 A. I don't think it is relevant to --

21 MR. GOLDENBERG: Thank you. I have no further
22 questions.

1 JUDGE WALLACE: Anyone else have cross of Mr.
2 Clark?

3 MR. GIORDANO: I do, Your Honor.

4 JUDGE WALLACE: Mr. Giordano.

5 MR. GIORDANO: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. GIORDANO:

8 Q. Good morning, Mr. Clark.

9 A. Good morning, Mr. Giordano.

10 Q. I would like to refer you to page 5, lines
11 9 to 12, of your direct. And you state there, don't
12 you, that the first purpose of your testimony is to
13 review the key policies reflected in the Illinois
14 Public Utilities Act and Electric Customer Choice
15 and Rate Relief Law that bear on how ComEd should
16 procure power and energy after the end of the
17 restructuring law's mandatory transition period,
18 correct?

19 A. Yes, that is correct.

20 Q. And I would also like to refer you to page
21 5, lines 117 to 119, and it is your testimony there,
22 isn't it, that the restructuring law on the whole

1 has worked very well in Illinois? In fact, you
2 testify that it has saved customers money, improved
3 reliability, and promoted the development of
4 efficient markets, correct?

5 A. Yes, that is correct.

6 Q. Now, has the restructuring law also worked
7 well for Commonwealth Edison Corp. during the
8 transition period?

9 A. Yes, both, you know, ComEd and customers
10 have benefitted in my judgment.

11 Q. But ComEd has benefitted, correct?

12 A. Yes.

13 Q. And has Exelon -- has the restructuring law
14 worked well for Exelon Corp. during the transition
15 period?

16 A. Yes.

17 Q. And has ComEd achieved reasonable profits
18 during each year of the transition period?

19 A. Yes.

20 MR. GIORDANO: I would like to mark BOMA Cross
21 Exhibit 1. I give four to the court
22 reporter?

1 JUDGE WALLACE: No, she just
2 wants one.
3 (Whereupon BOMA Cross
4 Exhibit 1 was marked
5 for purposes of
6 identification as of
7 this date.)

8 BY MR. GIORDANO:

9 Q. Now, this is -- BOMA Cross Exhibit 1 is
10 entitled Report Pursuant to Section 4(a)2 of the
11 agreement regarding various matters involving or
12 affecting rates for Commonwealth Edison Company
13 dated April 29, 2005, isn't that correct?

14 A. Yes, it is.

15 Q. Are you familiar with this document?

16 A. I have seen it, yes.

17 Q. I would like you -- I would like to refer
18 you -- well, first, I would like to ask, isn't it
19 true that this report is a report of ComEd's state
20 jurisdictional revenue requirement for the calendar
21 year 2004 with appropriate pro forma adjustments?

22 A. It appears to be so.

1 Q. Please refer to the last page of this
2 exhibit, that's Schedule A5, page 2 of 2.

3 A. Yes.

4 Q. And this is the jurisdictional allocation
5 summary for operating statement items for the year
6 2004 in thousands for Commonwealth Edison Company,
7 correct?

8 A. Yes.

9 Q. Now, I would like to refer you to line 3,
10 Column -- line 3, Column E.

11 A. Line 3.

12 Q. Column E which is entitled, it is total
13 operating revenues. And isn't it true that this
14 schedule shows on line 3, Column E, that operating
15 revenues for Commonwealth Edison Company in test
16 year 2004 were 3,569,000 -- I am sorry,
17 \$3,573,000 --

18 A. About three and a half billion?

19 Q. Yes.

20 A. Yes, sir.

21 JUDGE WALLACE: Just for the record, what?
22 Three and a half?

1 Q. Billion, correct. Now, doesn't non-DST
2 mean non-delivery service tariffs segment, correct?

3 A. That appears to be correct but I want to be
4 very clear here. Yes, I have seen this. I can
5 answer to the general statements, but I am not the
6 financial witness.

7 Q. I think that knowing you that you are
8 competent to answer the questions I am going to ask
9 you.

10 A. Thank you, Pat.

11 Q. Now, to refer you to line 15, Column E, and
12 isn't it true that this line shows that non-DST
13 operating expenses were approximately \$2.6 billion?

14 A. Yes, it does.

15 Q. So isn't it true that for the calendar test
16 year 2004 ComEd's non-DST operating revenues
17 exceeded ComEd's non-DST operating expenses by
18 approximately \$950 million?

19 A. That math seems to work. So I will say
20 conditionally, yes.

21 MR. ROSEN: Excuse me, did you say million or
22 billion?

1 Q. This is 950 million, almost a billion.
2 Now, doesn't this mean that ComEd's revenues from
3 its customers for supply of power were much higher
4 than its payments for purchase of power to supply
5 its customers in calendar test year 2004?

6 A. Repeat that for me, Mr. Giordano.

7 Q. Now, doesn't this mean that ComEd's
8 revenues from its customers for supply of power were
9 much higher than its payments for purchase of power
10 to supply those customers in test year 2004?

11 MR. HANZLIK: Can you just indicate what the
12 word "test year" means when you use it in connection
13 with --

14 Q. It is what's used in this document. It is
15 referred to as state jurisdictional revenue
16 requirement for the calendar 2004 test year?

17 MR. HANZLIK: Thank you.

18 A. And you have to ask your question again.

19 Q. Doesn't this show that ComEd's revenues
20 from its customers for supplying them power -- and
21 this is the supply of power, not delivery -- were
22 much higher than its payments to purchase that

1 supply in 2004?

2 A. I am really not sure of everything that's
3 in that number. The math, the straight math seems
4 to be pretty clear. But I don't know that that
5 leads to the statement you are just making. I just
6 don't know the answer to that.

7 Q. Well, it is true, is it not, that the
8 non-DST segment refers to the supply of electricity,
9 correct?

10 A. I believe that is correct.

11 Q. And it is also true that the operating
12 revenues for that supply of electricity were about
13 3.5 billion and the operating expenses for that
14 supply of electricity were about 2.6 billion, isn't
15 that correct?

16 A. Mr. Giordano, I really will stipulate that
17 the math works. But I am not certain of the
18 interpretation.

19 Q. But that means that -- but what it does
20 mean, without a doubt, is that for supply, your
21 operating revenues exceeded your operating expenses
22 by more than \$900 million in 2004, correct?

1 MR. HANZLIK: Your Honor, this question has
2 been asked and answered. The witness has stated
3 that he can't agree with the interpretation. He
4 agrees with the math but not necessarily the
5 interpretation.

6 MR. GIORDANO: I disagree. This specific
7 question was not asked in that level of specificity
8 as I just asked it. I am not asking him to draw a
9 conclusion. I am asking him to opine whether or not
10 the supply charges, supply revenues, were more than
11 \$900 million dollars more than --

12 JUDGE WALLACE: It is sustained. I think he
13 said the math works. So let's go on.

14 BY MR. GIORDANO:

15 Q. Now, isn't it true that in 2004 ComEd
16 purchased its electricity supply needed from its
17 customers from Exelon Generation at the amount
18 market value of energy applicable Period A charges
19 that were also used to establish the power purchase
20 option market index charges to customers?

21 A. You are going into a degree of detail by
22 going down here line by line that I cannot answer.

1 If you ask me --

2 Q. Oh, well, let's stop. You are familiar
3 with the -- break it down. Well, I know you are
4 familiar because you have testified about it on page
5 6, lines 142 to 143, about the contract with Exelon
6 Generation to provide supply to ComEd, correct?

7 A. Yes, I did.

8 Q. Now, you know that the price in that
9 contract is designated as the market value of energy
10 applicable Period A charges in the relevant year.
11 Do you know that?

12 A. I believe that is correct.

13 Q. Okay. And those charges are also the ones
14 that are used to establish the power purchase option
15 market index applicable Period A charges to
16 customers, correct?

17 A. Pat, I really would suggest that this type
18 of detail, line by line how these formulas work, I
19 am not the best witness to testify to that. I
20 believe we have witnesses coming up, maybe Bill
21 McNeil, that can give you very precise answers.

22 Q. Well, I can ask them that but you don't

1 know the answer to my last question then, is that
2 correct?

3 A. No.

4 Q. Has Exelon Corp. achieved reasonable
5 profits during each year of the transition period?

6 A. Yes.

7 Q. And isn't it true that those profits, that
8 has been increased from \$600 million in 2000 to 1.9
9 billion in 2004?

10 A. Where are you getting that number from?

11 Q. I asked the question.

12 A. Well, then I can't give you a yes or a no.
13 If it comes from our annual report or any of the
14 various things that Exelon has been involved in with
15 the financial statement, then the answer is yes. I
16 just don't know where you are getting that answer
17 from. But it sounds a bit high.

18 Q. Well, if you don't agree with those
19 numbers, can you provide the correct numbers for the
20 record?

21 A. Yes, I can, yes.

22 Q. Thank you. So you would agree then that

1 the transition period has worked well for customers,
2 ComEd and Exelon, correct?

3 A. Yes, I do, Mr. Giordano.

4 Q. Now, after this period that has worked
5 well, isn't it true that ComEd is proposing the
6 elimination of its current bundled rates, including
7 Rider 25 for non-residential space heating
8 customers, the elimination of its power purchase
9 option market index, the elimination of rider
10 interim supply service, the elimination of all of
11 your special rates, and instead to provide to
12 consumers that want to purchase bundled supply and
13 delivery from Commonwealth Edison only one option
14 and that is the option of purchasing electricity
15 from ComEd at rates determined by ComEd's proposed
16 auction?

17 A. That is correct.

18 Q. Now, isn't it true that the restructuring
19 law does not require these changes that I just
20 described in the prior question, and you agree they
21 are correct, at the end of the transition period?

22 A. I think the answer is it does not require

1 these changes. Can I complete my answer?

2 Q. No, that's okay. You can be asked on
3 redirect. I would like to refer you to page 12,
4 lines 277 to 279, where you testify that ComEd
5 concluded that an auction process like the Illinois
6 auction proposal best harnessed market forces to
7 reduce its overall procurement costs, correct?

8 A. That is correct.

9 Q. And then I would also like to refer you to
10 page 15, lines 339 to 40, where you testify that
11 this does not mean that the cost of electricity that
12 ComEd acquires -- let me. I better look at the --
13 that the cost of electricity that ComEd and its
14 customers require will do down compared to today,
15 correct?

16 A. That is correct.

17 Q. That's your testimony. Now, did ComEd's
18 charges to consumers for bundled supply and delivery
19 need to be increased to maintain reasonable profits
20 for ComEd?

21 A. Not for reasonable profits for ComEd, to
22 allow ComEd to continue making the necessary

1 improvements in the infrastructure to continue
2 providing reliable service. And on that investment
3 we do expect to earn a reasonable return.

4 Q. Sir, I asked you about charges to consumers
5 for bundled supply and delivery, not delivery. Do
6 the charges to consumers for bundled supply and
7 delivery need to be increased to maintain reasonable
8 profits for ComEd?

9 MR. HANZLIK: Then I object to the question
10 because bundled includes delivery, and the witness
11 is trying to answer that question.

12 MR. GIORDANO: Your Honor, I think the question
13 is clear. The delivery service tariffs are the
14 tariffs that are going to be filed this week, later
15 this week. I am referring to the tariffs that
16 include supply and delivery.

17 JUDGE WALLACE: Do you understand that
18 question, Mr. Clark?

19 THE WITNESS: Well, I understand the question.
20 I thought I answered it. Ask it again.

21 BY MR. GIORDANO:

22 Q. Okay. Do ComEd's charges to consumers for

1 bundled supply and delivery need to be increased to
2 maintain reasonable profits for ComEd?

3 A. And the answer to that is no because on the
4 supply side there is no return. On the delivery
5 side obviously we expect to get a return on our
6 investment.

7 Q. Okay. Well, let me ask it this way. If
8 bundled rates will remain frozen beyond the end of
9 the transition period, do you believe that ComEd
10 would continue to have reasonable profits?

11 A. If bundled -- if rates were continuing to
12 remain frozen --

13 JUDGE WALLACE: Mr. Clark, you are going to
14 have to speak up. I think your mic gave out.

15 A. Okay. If I understand your question --
16 and I am repeating it just to make sure I understand
17 it. If bundled rates are going to remain frozen
18 beyond the end of the transition period, ComEd's
19 financial position would be severely harmed, I
20 think, relatively quickly.

21 Q. And why is that?

22 A. Well, we won't be able to continue spending

1 money if we are paying more -- spending money to
2 improve our infrastructure and to continue providing
3 the best service we can to our customers if we are
4 in a position. California is one of the states that
5 comes to mind where we have got prices in the
6 marketplace, whatever they are, say if it was a
7 dollar and we are only able to get 50 cents from our
8 customers so we are paying the dollar but recovering
9 50 cents. It is just a question of when the money
10 runs out. So, yes, ComEd's position would be
11 harmed.

12 Q. But those are investments on the delivery
13 service side, correct?

14 A. That is correct.

15 Q. So you don't know and have done no study as
16 you sit there whether or not if bundled rates were
17 frozen what impact that would have on the profits of
18 ComEd?

19 A. Well, I do know. I mean, I just answered
20 that. It would have immediate financial harm to
21 ComEd. ComEd is the entity that will have whatever
22 revenues that are coming in. And if those revenues

1 are inadequate to cover the cost of the supply, that
2 will have a severe and very quick financial harm to
3 ComEd. It will affect our credit ratings almost
4 immediately, I would expect. And clearly you cannot
5 pay out more than you are bringing in very long.

6 Q. And the key to your point there is whether
7 or not the amount you are paying is less than your
8 cost of supply, correct? If the amount you are
9 paying is the same as the cost of supply, there is
10 no problem. Or more than or less than the cost of
11 supply there is no problem, correct?

12 A. No, that is not correct. The amount that
13 we expect to pay will be the market cost for the
14 supply. And if we are capped at a recovery rate
15 lower than that, it will have severe immediate
16 financial harm to ComEd and ComEd's customers and
17 impair our ability to continue providing long term
18 the standard of reliability that I think our
19 customers would expect from us in Illinois.

20 Q. If you are paying less than the cost of
21 supply, correct, that would be a problem, correct?

22 A. Mr. Giordano, if we are paying less -- I

1 don't know if the market price is going to clear it.
2 But whatever it is, if our recovery is less than
3 that, all the things that I just identified would
4 occur.

5 Q. I don't think I asked the question
6 properly. If you are charging the customers less
7 than your cost of supply, that would be a problem,
8 correct?

9 A. If we are charging customers less than our
10 cost, if we are charging customers less than it
11 costs us to go into the marketplace to secure that
12 power, all the dire consequences that I identified
13 and some I haven't would occur.

14 Q. Now, you are president of ComEd, correct?

15 A. Yes.

16 Q. And you are also executive vice president
17 and chief of staff of Exelon, correct?

18 A. Yes.

19 Q. Now, isn't it true that in your capacity
20 with Exelon that you have the responsibility for
21 designing and implementing policies that are
22 designed to maximize returns to Exelon shareholders

1 to the greatest extent possible?

2 A. I am speaking directly for Exelon
3 corporation and I have a fiduciary responsibility to
4 the shareholders of Exelon, yes.

5 Q. So the answer to that question is yes?

6 A. It is my answer.

7 Q. Okay. And you testified that from Exelon's
8 standpoint, I am referring to page 17, lines 398 to
9 399, where you are asked how the Illinois auction
10 proposal benefits ComEd and Exelon and you contend
11 there that the proposal benefits both Exelon and
12 ComEd, correct?

13 A. That is correct.

14 Q. You testified that from an Exelon
15 standpoint the auction offers Exelon Generation an
16 opportunity to compete fairly to supply ComEd in
17 accordance with FERC requirements, correct?

18 A. That is correct.

19 Q. Isn't it true that to the extent the
20 auction increases prices for supply paid by ComEd to
21 ExGen, that this will benefit Exelon Corp.?

22 A. That is not true. May I explain?

1 Q. Yeah, sure, explain if you can.

2 A. The auction is a process. That's all it
3 is. It is a process. The auction itself is not the
4 determining factor in setting the market price. It
5 is willing suppliers and willing buyers. And the
6 marketplace, the greater marketplace, will determine
7 where those prices clear to where a willing buyer
8 like ComEd will be able to secure all the load it
9 needs at a price they are willing, the sellers, are
10 willing to provide that energy. So it is not the
11 auction. The auction is a process.

12 The reverse auction that we are discussing
13 here is a method that we believe is the best method.
14 I believe it is the best method. It is a method
15 that is transparent. It is a method that I believe
16 meets all the criteria that was established on
17 consensus during the workshop process. I believe
18 that it best complies with the intent as I
19 understand it of the Illinois restructuring law, but
20 it doesn't set the price itself. It reflects the
21 price.

22 Q. But aren't you breaching your duties to

1 Exelon if you are designing an auction for ComEd
2 that gets the lowest price possible?

3 A. Repeat that again. I think I understand it
4 but I want to make sure before I answer it.

5 Q. I said aren't you breaching your duty to
6 Exelon shareholders if you design an auction for
7 ComEd that gets the lowest price possible?

8 A. No.

9 Q. You also taunt the fact that ComEd will not
10 mark up the price of electricity when it passes
11 through charges to customers?

12 A. Yes.

13 Q. But isn't it true that Exelon gets more
14 money from higher auction prices regardless of
15 whether ComEd marks up the price of electricity when
16 it passes through charges to consumers?

17 A. Exelon Generation?

18 Q. Yes, sir.

19 A. It is like any other generator. And when
20 the market prices move up, they make more money.
21 When it moves down, they make a lot less.

22 Q. Are you familiar with the descending clock

1 uniform price auction proposal being made by ComEd
2 in this proceeding?

3 A. Yes.

4 Q. Do you believe that the Commission needs to
5 make an independent determination of whether the
6 descending clock uniform price approach will result
7 in the lowest price possible?

8 A. Yes, I do.

9 Q. And if the Commission determines that Dr.
10 Laffer's proposed descending clock pay as bid
11 approach would result in a lower price, would ComEd
12 implement this approach?

13 A. I really am only very, very sparsely
14 familiar with Dr. Laffer's testimony. I read it in
15 executive summary. At least two other ComEd
16 witnesses have gone over it in great detail,
17 Mr. Giordano, and can respond more thoroughly to
18 that question.

19 Q. But I am asking you if the Commission made
20 the determination that Dr. Laffer's approach would
21 result in a lower auction price, would ComEd
22 implement that approach?

1 A. ComEd will implement any process that the
2 Illinois Commerce Commission determines to be the
3 appropriate process to procure power.

4 Q. So the answer is yes to my question,
5 correct?

6 A. The answer is yes.

7 Q. But you are the one that is sponsoring
8 ComEd Exhibit 1.2, correct, the staff report to the
9 Commission?

10 A. Yes.

11 Q. And I would like to refer you to the
12 procurement working group, the famous 18 desirable
13 characteristics on page 6 to 7 of Exhibit 1.2.
14 Isn't it true that Dr. Laffer's proposal is also a
15 vertical tranche auction that also meets the 18
16 attributes described on pages 6 to 7 of the
17 Commission's staff report?

18 A. Well, it is obvious the opinion of the
19 ComEd expert witness is that it does not meet the 18
20 criteria as well as the Illinois auction proposal
21 that we are proposing.

22 Q. The key word there being as well. But it

1 does meet the 18 attributes. It is the ComEd
2 witness' opinion it doesn't meet them as well but it
3 does meet the 18 attributes and it is for the
4 Commission to decide whether it meets them as well,
5 isn't that correct?

6 A. It is for the Commission to decide period.
7 I certainly agree with that. The rest of your
8 question I disagree.

9 Q. What do you disagree with?

10 A. I only agree that it is for the Commission
11 to decide. Everything else you said, I disagree
12 with.

13 Q. You don't agree that it will be the
14 Commission's decision whether it better meets his
15 approach -- better meets these 18 goals of the
16 procurement group?

17 A. I agree that, Mr. Giordano, you completely
18 agree it is the Commission's decision.

19 Q. Okay, thank you. Now, let me refer you
20 again to this report. Page 8 of the report, the
21 last two lines, doesn't it state that the wholesale
22 marketplace from which ComEd and Ameren will be

1 buying their electricity is heavily concentrated by
2 a few large generation companies?

3 A. That is correct.

4 Q. And what large generation companies are
5 they referring to in the ComEd service territory?

6 A. I believe they are referring to Midwest Gen
7 and Exelon Generation.

8 Q. And then on page 9 at the second -- it is
9 the third full sentence, don't they state that where
10 concentration levels are high, particularly where
11 one or two firms control a significant portion of
12 production capacity, firms have the ability to
13 exercise market power?

14 A. I didn't find the lines but if you are
15 reading directly from this, I agree it is stated.

16 Q. All right. And now let me refer you -- and
17 I am going to ask you a question about this
18 statement so I need you to find it. It is on the
19 top of page 11 of the report. It is the third full
20 sentence where it says, "Second, while the vertical
21 tranche auction may be the best option given the
22 current state of the wholesale market, and while

1 litigated rate cases for power and energy tariffs
2 and delivery service tariffs will determine the
3 actual prices customers pay in rates, the costs of
4 power and energy developed in the auction will be
5 the key determinant of those rates. That auction
6 price may reflect the higher costs of the less
7 efficient generators bidding into the market.

8 Consequently, if auction prices settle at these
9 higher levels, the current unregulated owners of the
10 utilities' lower cost legacy generation assets can
11 expect to realize profits that are greater than
12 would be achieved under the pre-transition period
13 structure." Who are the current unregulated owners
14 of the utilities' lower cost generation assets?

15 A. I accept the quote, Mr. Giordano. I can't
16 give you a precise interpretation of what is meant
17 by it, but the nuclear power plants owned by Exelon
18 Generation and, I don't know, perhaps the fossil
19 plants owned by Midwest Gen, may be the reference
20 point here. I shouldn't speculate. I don't know.

21 Q. And you know, don't you, that ComEd's
22 proposal would result in a uniform price in the

1 descending clock auction so that all generators, all
2 bidders, would end up being the same, paying the
3 same price, isn't that correct?

4 A. I believe it is.

5 Q. So if Exelon bid in the auction with lower
6 costs legacy generation assets, this would be the
7 same, they would be paid the same price that a
8 bidder that had a less efficient generator would be
9 paid, isn't that correct?

10 A. I have to think about that. Can I respond
11 in a way -- because I am interpreting your question.
12 The low cost, to the sense you are talking about
13 lower cost, nuclear power plants pay load units
14 which under the auction can only have one advantage,
15 one benefit, and that is to lower costs. This would
16 be a big benefit to consumers.

17 Q. But will they get that, the consumers, get
18 that benefit if they are paid the same, if those
19 bidders of the nuclear generation are paid the same
20 amount at a uniform price auction as less efficient
21 generators?

22 A. You may be asking something that I am not

1 tracking as well. But I will give you the same
2 answer I gave you before. The bottom line will be
3 what will result if the lower cost is being passed
4 to consumers. The fact that you have low cost base,
5 higher priced nuclear power plants bidded into this
6 auction process has to have an overall effect of
7 overall pushing the cost down. And that gets passed
8 to consumers.

9 Q. But under the descending clock auction, we
10 will never get to the point, will we, where Exelon
11 can bid a very low price for that nuclear
12 generation?

13 A. I disagree.

14 MR. HANZLIK: The other thing is I would ask
15 Mr. Giordano to direct some of these questions to
16 some of the other witnesses, like Mr. McNeil who
17 will be coming here. Mr. Clark has said that he
18 doesn't have intimate familiarity with these kinds
19 of details. I mean, he referred to other witnesses.

20 MR. GIORDANO: We will ask more questions for
21 the other witnesses.

22 MR. HANZLIK: Thank you.

1 MR. GIORDANO: We don't have a lot left for
2 Mr. Clark. He is giving candid answers, as I would
3 have expected, and that's why I would like to ask
4 questions of Mr. Clark.

5 (Laughter.)

6 MR. HANZLIK: You will get candid answers from
7 all of our witness also, Mr. Giordano.

8 BY MR. GIORDANO:

9 Q. Mr. Clark, BOMA witnesses Childress and
10 Brookover have estimated rate increases for a sample
11 of non-residential space heating customers based on
12 a reasonable range of auction prices from 4.5 cents
13 per kilowatt hour to 6 cents per kilowatt hour. And
14 based on the 4.5 percent price, low auction price,
15 the rate increase for those customers would be 17
16 percent. And at the high auction price of 6 cents,
17 the rate increase would be 46 percent. Now,
18 assuming that those rate increase projections are
19 correct, do you have any problem with those rate
20 increases?

21 A. You made a comment or maybe it wasn't a
22 question. But I think it got into the record so I

1 feel compelled to respond to that question regarding
2 the candor of ComEd witnesses which is, all ComEd
3 witnesses that sponsored testimony will be straight
4 forward and candid of any questions asked them.

5 Q. I appreciate that, Mr. Clark. I certainly
6 didn't -- all I said was that remains to be seen.
7 They are not here yet.

8 A. I certainly didn't mean --

9 JUDGE WALLACE: All right. Let's keep this
10 rolling, please.

11 A. I can't track the math. I was trying to.
12 I can't track the math. If Mr. Hanzlik has captured
13 that, I am very happy to come back or have one of
14 the witnesses, probably Bill McNeil, answer that
15 exact calculation. I can't track the math.

16 Q. But I am not asking you that. I am asking
17 you -- let me ask it even more basically. Do you
18 have any problem with rate increases to
19 non-residential space heating customers in the range
20 of 17 percent or 46 percent, assuming that that's
21 correct?

22 A. My answer is our cost to serve ought to be

1 accurately reflected for our various customers and
2 that cost to serve is either the pass through for
3 the commodity or the cost to serve a customer on the
4 wire side of the business. And, no, I would have no
5 issue if the correct costs to serve were reflected
6 in tariffs being charged.

7 Q. Regardless of how high the rate increase
8 is, you have no issue, is that your testimony?

9 A. My testimony is that our rates to our
10 customers all reflect the costs to provide the
11 service to that customer in order to be able to
12 provide the type of reliability customers expect.

13 Q. And would you agree the cost of services
14 ratemaking is an art, not a science?

15 A. We filed extensive testimony, Mr. Giordano,
16 that gets scrutinized by any intervenor in the case
17 and a ergo the testimony is very, very quantitative,
18 not just qualitative.

19 Q. So your testimony is that no matter what
20 the increase is, rate shocks should not be taken
21 into account in this proceeding, even though it has
22 been taken into account before by the Commission?

1 A. No, that is not my testimony.

2 Q. So you think it should be taken into
3 account, rate shock?

4 A. I think that cost of service should always
5 be taken into consideration. And I think that as
6 this is a hundred percent within the discretion of
7 the Commission, if they feel there is an issue
8 around, using your term, rate shock, to look at
9 mitigating that. That is something the Commission
10 certainly can consider.

11 Q. Are you aware that in New Jersey they
12 didn't charge the auction rates in the first year of
13 the auction and they kept rates frozen?

14 A. I think that -- I don't recall that.

15 Q. So you don't know?

16 A. I just don't recall it.

17 MR. GIORDANO: Again, I just have a few more.
18 I am completed. Thank you, Mr. Clark. I would just
19 like to move for the admission of BOMA Cross Exhibit
20 1.

21 JUDGE WALLACE: Any objection?

22 MR. HANZLIK: No objection.

1 JUDGE WALLACE: BOMA Cross Exhibit 1 is
2 admitted.

3 (Whereupon BOMA Cross
4 Exhibit 1 was admitted
5 into evidence.)

6 JUDGE WALLACE: Ms. Hedman, did you move 5 and
7 6?

8 MS. HEDMAN: I did not.

9 JUDGE WALLACE: Anyone else have questions of
10 Mr. Clark? Mr. Rosen.

11 CROSS EXAMINATION

12 BY MR. ROSEN:

13 Q. Mr. Clark, my name is Larry Rosen and I am
14 with the Citizens Utility Board and I have some
15 questions to ask you. I ask my questions in a
16 slightly different way and I don't mean to be
17 repetitive, but if I do, I apologize. Now, as I
18 understand it, you work for Commonwealth Edison as
19 the president, isn't that correct?

20 A. That is correct.

21 Q. And Commonwealth Edison's customers are
22 people who acquire electricity from your company,

1 isn't that correct?

2 A. That is also correct.

3 Q. And that includes the 3.7 million
4 residential customers of Chicago, does that sound
5 right?

6 A. That count, I think it is a little lower
7 than that.

8 Q. That sounds approximately right?

9 A. Yeah.

10 Q. And when you wear the hat of the president
11 of Commonwealth Edison your clients are essentially
12 the customers of Commonwealth Edison or including,
13 among others, the residents of Chicago, isn't that
14 correct?

15 A. Yes.

16 Q. But at some point you also sit on Exelon
17 Corporation and you are the vice president, isn't
18 that correct?

19 A. Let the record reflect executive vice
20 president.

21 Q. You certainly can correct me when I
22 misstate your qualifications here. And as the

1 executive vice president of Exelon Corporation you
2 wear a different hat at that point in time, don't
3 you?

4 A. Yes.

5 Q. And at that time your responsibility, among
6 others, is to the shareholders of Exelon
7 Corporation, isn't that correct?

8 A. Yes.

9 Q. And part of those responsibilities is to
10 insure the greatest rate of return on those
11 shareholders' investments with Exelon Corporation.
12 You want to make sure that your shareholders get the
13 best investment they can in Exelon Corporation,
14 isn't that right?

15 A. As a senior executive of Exelon, I have a
16 fiduciary responsibility obviously to protect the
17 investment of shareholders.

18 Q. Now, there are other people who are going
19 to testify here today who work for Commonwealth
20 Edison?

21 A. That is correct.

22 Q. And that is Ms. Moler?

1 A. She is an Exelon employee.

2 Q. Solely an Exelon employee?

3 A. That is correct.

4 Q. So her sole responsibility is to the
5 shareholders of Exelon, isn't that correct?

6 A. First, all of the -- Exelon is a large
7 umbrella organization under which you have the
8 various parts that were identified on one of the
9 organizational charts.

10 Q. But Ms. Moler solely works for Exelon
11 Corporation?

12 A. She is a senior executive in the Exelon
13 Corporation.

14 Q. She doesn't work for Commonwealth Edison?

15 A. No.

16 Q. So when she is here to testify today, she
17 really is only here to testify with respect to
18 Exelon?

19 A. She is here to testify about how the
20 organization works. She is here to testify how we
21 have integrated into that organization. She is here
22 to testify, as Bill will, about how markets work.

1 Q. But is she head of marketing?

2 A. She is an Exelon employee.

3 Q. And I hope I don't mispronounce it because
4 the first time I said Juracek but it is Juracek?

5 A. Juracek.

6 Q. Who does she work for?

7 A. Arlene is -- Arlene is an Exelon employee
8 and she, I don't recall, I believe Arlene -- when
9 she comes here, you should ask her directly because
10 I may be mixing it up. But I believe that she is an
11 Exelon employee.

12 Q. And there is a Mr. Rowe, is there not?

13 A. Yes.

14 Q. And who does he work for?

15 A. Whatever is stated in his testimony.

16 Q. So he works for Exelon Corporation, does he
17 not, as chairman of the board?

18 A. Oh, are you talking about John W. Rowe?

19 Q. Oh, there are --

20 A. John W. Rowe is chairman of the board of
21 Exelon Corporation.

22 Q. Okay. And he also sits on a Commonwealth

1 Edison board, isn't that correct?

2 A. Yes.

3 Q. And he also sits on the board of Exelon
4 Generation?

5 A. Yes.

6 Q. So he is wearing all three hats here, is he
7 not?

8 A. He is the chairman of the board of the
9 reorganization.

10 Q. And as far as you know, Mr. Rowe supports
11 the auction proposal that is part of this hearing,
12 isn't that correct?

13 A. Yes.

14 Q. Now, during your testimony there was some
15 reference to the Post-2006 Initiative and I stand on
16 the objection that that should not be part of this
17 proceeding but I have a few questions to ask about
18 that. Now, was Commonwealth Edison's position in
19 the Post-2006 Initiative that an auction process be
20 used to procure electricity at the end of 2006,
21 isn't that correct?

22 A. Yes.

1 Q. And it is also Exelon Generation's position
2 that this auction process be used as well?

3 MR. HANZLIK: Could we have read back his last
4 question?

5 JUDGE WALLACE: No. What do we need it for?
6 Let's go on. If you want a question read back, you
7 are going to have to ask me and I don't like
8 questions read back because it slows things down.

9 MR. ROSEN: You want me to re-ask this
10 question?

11 MR. HANZLIK: I just didn't understand your
12 last question. Would you ask your last question?

13 MR. ROSEN: Well, I don't want to do that
14 because I got the answer that I want. But I will
15 tell you out there when we take a break.

16 Q. Okay. The Post-2006 Initiative, it started
17 when, if you know? When did that process start?
18 Sometime in 2005, at the end of 2004?

19 A. Well, the auction workshops I believe
20 started in sometime in 2004 but I think that the
21 idea of the Post-2006 Initiatives, plural, probably
22 go back several years even before 2004.

1 Q. Who hired Ms. LaCasse? Was that Exelon or
2 Commonwealth Edison?

3 A. Commonwealth Edison.

4 Q. When was she hired? Do you know?

5 A. No.

6 Q. I don't really require it. Who hired
7 Mr. Hogan. He is going to be one of the witnesses
8 here?

9 A. ComEd.

10 Q. Who hired him?

11 A. ComEd.

12 Q. I am sorry. And Mr. Hieronymus?

13 A. All the witnesses are ComEd witnesses.

14 Q. Were they hired before the Post-2006
15 committees met, to your knowledge?

16 A. Before the post -- are you referring to the
17 workshop process?

18 Q. That is correct.

19 A. That's another thing to check. I can't
20 recall the answer. I would be happy to get it for
21 you.

22 Q. Was Commonwealth thinking of using an

1 auction process prior to 2005?

2 A. Prior to 2005?

3 Q. Yes.

4 A. Oh, yes.

5 Q. And why is that?

6 A. Well, in 2003 or 4, I'm sorry I don't
7 remember the exact dates, sometime in 2003, I
8 believe, we had looked at another option which would
9 have continued to involve using an affiliate
10 contract with ExGen, among others. The General
11 Assembly did not accept that and indicated that we
12 needed to go back to the drawing board and consider
13 some other options and many competitive options.

14 Q. So ComEd went into this Post-2006
15 Initiative with the idea that it wanted this auction
16 process, isn't that correct?

17 A. We went into the Post-2006 debate or
18 initiative with an idea that we needed to come up
19 with something that reflected the competitive market
20 and allowed us to pass on through a competitive
21 process the cost of supply.

22 Q. And the process?

1 A. Can you allow me to finish?

2 Q. Sure. I am sorry.

3 A. Because we thought, I thought, that most
4 reflected the mandate of the restructuring law.

5 Q. And in the process you were thinking of
6 going into that committee was the auction process
7 that is the subject of this hearing, isn't that
8 true?

9 A. The answer to that is not true.

10 Q. I am sorry, sir, I didn't hear you.

11 A. It is not true.

12 Q. Didn't you just say that you were thinking
13 about the post auction process -- excuse me, the
14 auction process as a means of acquiring electricity
15 as far back as 2003?

16 A. Yes, I did.

17 Q. And 2004?

18 A. Yes.

19 Q. Do you expect -- I wanted to touch on
20 something Mr. Giordano said and I want to make sure
21 that I understood it correctly, and if I am wrong, I
22 am sure you will correct me. But essentially

1 Commonwealth -- excuse me, Exelon Generation owns,
2 essentially, all nuclear plants?

3 A. Exelon Generation?

4 Q. Yes.

5 A. That is not correct.

6 Q. Okay. What percentage of Exelon
7 Generation's electricity is produced by the nuclear
8 plants it owns? A large percentage?

9 A. Yes.

10 Q. And I think you said earlier that Exelon
11 Generation owns the biggest nuclear fleet in the
12 United States, isn't that right?

13 A. That is correct.

14 Q. Now, what other types of generation or
15 generators of electricity are there? There is coal,
16 isn't that right?

17 A. Fossil fuels, all of them.

18 Q. Fossil fuel which is coal and natural gas?

19 A. And oil.

20 Q. And oil. As the market exists today, who
21 is the most efficient producer of electricity to
22 your knowledge, the generators using nuclear plants

1 or the generators using gas, natural gas?

2 A. Well, that's a subjective question so I am
3 going to give you a judgmental answer. I believe
4 that one of the most -- one of the most efficient
5 ways of producing low cost power is through the use
6 of nuclear power plants.

7 Q. And that's the same answer you would give
8 if the generators were using coal, for instance,
9 isn't that right?

10 A. I think there is a power more efficient.

11 Q. And that would be the same answer if they
12 were using oil?

13 A. Yes.

14 Q. Now, in terms of the people who you expect
15 to bid during the auction, we are talking about
16 generators of electricity through nuclear plant,
17 isn't that right?

18 A. Yes, that is correct.

19 Q. And we are talking about bidders who use
20 natural gas to generate electricity, isn't that
21 right?

22 A. That is correct.

1 Q. And we are talking about bidders who use
2 oil to generate electricity?

3 A. I believe that is correct.

4 Q. So of the three it is your opinion that
5 those that have generation power through nuclear
6 reactors are the most efficient than those other two
7 sources of power to electricity, isn't that correct?

8 A. It is correct that I believe that
9 electricity generated through nuclear power is more
10 efficient.

11 Q. Now, the power purchase agreement you have
12 with Exelon Generation runs through 2007, isn't that
13 right?

14 A. It runs through the end of 2006.

15 Q. Now, isn't it true that Exelon Generation
16 has power purchase agreements with other companies
17 like Commonwealth Edison that run past 2006?

18 A. I don't know that.

19 Q. Well, earlier you were shown an exhibit, AG
20 Cross Exhibit Number 4, which is a United States
21 Securities and Exchange Commission Form 4?

22 A. Okay.

1 Q. And this is filed with the Securities and
2 Exchange Commission, isn't that correct?

3 A. Yes.

4 Q. Do you know what a 10K is?

5 A. Yes.

6 Q. What is a 10K?

7 A. It is one of the financial statements that
8 we file along with other large corporations to the
9 FCC and other corporations periodically.

10 Q. Do you have any input in the formulation of
11 the 10K that Exelon Corporation files with the
12 Securities and Exchange Commission?

13 A. With respect specifically to ComEd, yes.

14 Q. And are you aware that on February 3, 2005,
15 Exelon Corporation filed its Form K for the period
16 ending December 31, 2004, with the Securities and
17 Exchange Commission?

18 A. That sounds familiar.

19 Q. Did you review that filing by any chance?

20 A. I review all of the financial filings as
21 they relate to ComEd.

22 MR. ROSEN: Can I approach the witness, Your

1 Honor?

2 JUDGE WALLACE: Yes. Do you have many more
3 questions, Mr. Rosen?

4 MR. ROSEN: Not that many.

5 Q. I am showing you this. It's the page 17 of
6 the Form 10K that Commonwealth Edison and Exelon
7 Corporation filed with the Securities and Exchange
8 Commission on February 2005 and I am going to direct
9 you to a chart on page 17 and it says Long Term
10 Contracts and I will read to you, "In addition to
11 energy produced by own generation assets, generation
12 sales, electricity pursuant under the long term
13 contracts described below." Does this refresh your
14 recollection that Exelon Generation has long term
15 contracts with other companies besides ComEd?

16 A. I clearly accept what's filed here.

17 Q. So you have no reason to believe that that
18 information is inaccurate?

19 A. That is correct.

20 Q. And it says here that under a long term
21 purchase agreement Kincaid Generation which is
22 located in Kincaid, Illinois, are you familiar with

1 Kincaid Generation, LLC?

2 A. I know where the Kincaid generating
3 stations are, yes.

4 Q. And it shows that that purchase power
5 agreement expires in 2013?

6 A. Yes, it does.

7 Q. And then there is a -- let's take one in
8 Illinois again. Lincoln Generating Facility, LLC,
9 are you familiar with that?

10 A. Not that particular facility, no.

11 Q. Okay. But this indicates that that PPA
12 expires in 2011, isn't that correct?

13 A. I would agree that if is the in report,
14 that is the case.

15 Q. And then there is Elwin Energy, LLC, in
16 Elwood, Illinois. Are you familiar with that?

17 A. Yes.

18 Q. And that shows that that long term purchase
19 power agreement expires in 2011?

20 A. Yes. The document says 2012.

21 Q. Okay. I can't see without my reading
22 glasses. So according to this 10K filing that

1 Exelon Corporation submitted to the Securities and
2 Exchange Commission in February 2005, Exelon
3 Generation based on this filing does have long term
4 power purchase agreements with other companies like
5 Commonwealth Edison that extend beyond 2007, isn't
6 that correct?

7 A. That would appear to be the case.

8 Q. Now, we have had some discussion about the
9 wholesale markets that exist throughout the United
10 States among other regions, isn't that correct?

11 A. Yes.

12 Q. And to a certain extent the success of the
13 auction depends upon the development of a wholesale
14 market throughout the United States, including in
15 the Midwest, isn't that right?

16 A. Yes.

17 Q. And part of that wholesale market has been
18 developed through what's known as regional
19 transmission organizations called RTOs?

20 A. That's correct.

21 Q. Are you aware that there are several states
22 that have opposed the formation of regional

1 transmission organizations?

2 A. I am generally aware that some states,
3 particularly some in the south and southwest, have
4 had some opposition, yes.

5 Q. Are you also familiar that there have been
6 some organizations that have tried to develop RTOs
7 but have abandoned that as a result of the
8 resistance they have received from state regulatory
9 agencies?

10 A. No.

11 Q. Well, I want to refer you back to again the
12 10K. May I approach the witness again?

13 A. Yes.

14 Q. And this is on page 4 or page 9, and see
15 where it says here, and I will read it to you, "The
16 FERC has attempted to expand the development of the
17 regional markets which has generated substantial
18 opposition from state regulators and other
19 governmental bodies. In addition, efforts to
20 develop an RTO has been abandoned in certain
21 regions." You don't have any reason to believe that
22 that is an inaccurate statement, do you?

1 A. No, I do not.

2 Q. Now, as far as you know Mr. Hogan is
3 testifying that the market, wholesale markets, are
4 fine in Illinois, are they not?

5 A. I think he will have a very positive series
6 of statements to make that I can he can support in
7 his testimony.

8 Q. And Hieronymus essentially said the same
9 thing, isn't that right?

10 A. Yes, he did.

11 Q. Are you aware that Exelon Corporation has
12 said in their 10K filing that the development of
13 large competitive wholesale electricity markets
14 would facilitate an auction to meet ComEd's and
15 PECO's PLO, polar load obligations?

16 A. Yes.

17 Q. Are you also aware that Exelon Corporation
18 has said in its 10K filings on page 8, "While Exelon
19 purports the development of RTOs and implementation
20 of standard market protocols, but it cannot predict
21 their success or whether they will lead to the
22 development of the envisioned large successful

1 wholesale markets." Are you aware that Exelon made
2 that statement in their 10K?

3 A. I accepted that as an accurate quote.

4 Q. Okay. Do you know why Exelon Corporation
5 took the position in their 10K that they can't
6 predict the success or whether there would be the
7 development of envisioned large successful wholesale
8 markets?

9 A. I think that that's a question -- my answer
10 is no. That question will be better directed to
11 Betsy Moler and other Exelon witnesses.

12 Q. Does Exelon Corporation expect Exelon
13 Generation to be a bidder in the auction process,
14 assuming that the ICC approves it?

15 A. Yes.

16 Q. Now, earlier on were you aware that one of
17 the limitations on the auction proposal was that no
18 one supplier could obtain more than 50 percent of
19 ComEd's requirement needs?

20 A. I am aware that there were discussions
21 about a cap, yes.

22 Q. Was it -- do you know whether or not Exelon

1 Generation believed that it could capture all of the
2 -- let me start this over again. Was it to your
3 knowledge Exelon Generation's plan to try and get as
4 much of that electrical power that it could possibly
5 obtain through the auction process?

6 A. I think I know what you are asking, but I
7 am not a hundred percent clear so I don't want to
8 risk answering it and not understand the question.

9 Q. Okay. I will try to rephrase it so you
10 understand. Is it your understanding that Exelon
11 Generation is hoping to acquire as much of the
12 market it can through the auction process?

13 A. No, I have no such understanding.

14 Q. You don't know that at all?

15 A. No, I have no such understanding. It is
16 not I don't know. I have no such understanding.

17 Q. Well, do they have the capacity, as far as
18 you know, to capture 50 per of the power needs?

19 A. In Illinois?

20 Q. Yes.

21 A. No.

22 Q. Do they have the capacity to capture 33

1 percent?

2 A. I don't know.

3 Q. You don't know that?

4 A. I don't know.

5 Q. You said something about the process, the
6 auction process, as proposed by Commonwealth Edison
7 has some built in safeguards for customers,
8 especially residential customers?

9 A. Yes.

10 Q. What's your understanding of how long the
11 ICC Commission has to accept the results of the
12 auction?

13 A. I don't recall the exact time frame.

14 Q. Three business days, does that sound right?

15 A. If that's correct, subject to someone
16 telling me otherwise, I will accept what you are
17 saying.

18 Q. Do you know what the ICC is supposed to
19 review within those three business case?

20 A. The ICC through its own mechanism, whatever
21 time frame the process would allow for, would review
22 whether they thought that the auction resulted in a

1 fair and reasonable price to pass through to
2 customers.

3 Q. And is it your understanding that their
4 determination is based in part on what the auction
5 manager submits to them?

6 A. Yes.

7 Q. And that auction manager is going to be
8 hired by Commonwealth Edison, isn't it -- isn't the
9 auction manager going to be hired by Commonwealth
10 Edison?

11 A. That is our proposal, yes.

12 Q. And the auction manager has, what, one
13 business day to provide that information to the ICC
14 after the auction concludes, isn't that correct?

15 A. Again, assuming that you are accurately
16 reflecting that statement, that's correct.

17 Q. So your understanding of the ICC review
18 after the fact is that the auction manager has one
19 business day to submit the information about the
20 auction to the ICC, isn't that right?

21 A. Again, if that's the correct time frame,
22 then that would be my understanding.

1 Q. And the ICC has three business days after
2 the end of auction to decide whether to accept or
3 reject the auction, isn't that correct?

4 A. I believe that is correct.

5 Q. And that's -- as far as you know that's the
6 only review process that the ICC is going to conduct
7 under Commonwealth Edison's current proposal, isn't
8 that correct?

9 A. I don't think so. And while I am not the
10 auction expert and Bill McNeil is and I will tell
11 you to ask those questions of him, I think the
12 entire process they are proposing and the entire
13 process that will be subject to these hearings will
14 result in a procedure and a time frame that the
15 Commission considers to be appropriate.

16 Q. I am talking about after the auction
17 concludes, not beforehand. Just after the auction
18 concludes, your understanding is that the ICC has
19 only within three business days to decide whether to
20 accept or reject the results of the auction?

21 A. I have answered that to the best of my
22 ability.

1 Q. Okay. So you are not certain either way,
2 is what you are saying?

3 A. Exactly.

4 MR. ROSEN: I think I may be done but I want to
5 confer with my colleague. Can I talk one second?
6 We are sort of a team here.

7 (Pause.)

8 Just a few more questions and I will be
9 done here.

10 Q. Were you in attendance in New York during
11 the Exelon investor conference that took place on
12 August 5 of 2005?

13 A. I was not. My representative was and I had
14 talked to him.

15 Q. Did you review any of the materials that
16 were presented during that?

17 A. I saw the materials that were advanced and
18 was briefed on the presentation of that report.

19 Q. And so you had an opportunity to look at
20 them beforehand. Were you aware that Exelon said
21 during this conference that natural gas prices drive
22 power prices?

1 A. That sounds accurate.

2 Q. And you agree with that then?

3 A. Yes.

4 Q. Do you also agree that during this
5 presentation Exelon said that rising fuel prices,
6 central Appalachian coal and natural are pushing
7 forward PJM Nihop prices higher?

8 A. Yes.

9 Q. So to say that in laymen's language, that
10 means that really the producers of the electricity
11 to coal and natural gas are having an upward impact
12 on PJM prices, isn't that correct?

13 A. It means that to the extent that coal, gas,
14 oil prices are going higher, that will drive
15 obviously prices higher.

16 Q. You don't expect that to change in 2007,
17 2008, do you?

18 A. I expect the market to do what it does. I
19 have no other speculation.

20 Q. And were you aware that Exelon also
21 represented to its shareholders that they expect the
22 strong growth from 2006 and 2007 primarily driven by

1 the end of frozen rates in Illinois?

2 A. Yes.

3 Q. And you agree with that statement?

4 A. Yes.

5 Q. And do you agree with the statement made
6 during that hearing that that impact on earnings is
7 expected to be positive for Exelon overall when that
8 rate increase ends?

9 A. Yes.

10 Q. And do you agree that the end of the frozen
11 rates in Illinois means that the end of serving
12 ComEd's POLR obligation is to add a market price, is
13 expected at a market price rather than the prices
14 that are still in effect?

15 A. As a competitor of market price, yes.

16 Q. As you sit here now, you don't have any
17 reason to believe that those market prices will be
18 lower than the prices that the customers in Illinois
19 are now being charged?

20 A. After a 22 percent rate increase after a
21 nine-year cap, no, I do not.

22 Q. Were you also aware a statement was made

1 that the end of frozen rates in Illinois in 2007
2 means that ComEd can earn a fair return on its
3 distribution investments?

4 A. Yes.

5 MR. ROSEN: I have nothing further.

6 JUDGE WALLACE: Does anyone have any further
7 cross of Mr. Clark?

8 MR. ROBERTSON: If we take a lunch break, I am
9 going to be able to cut some of my stuff out because
10 people have covered a lot of the areas that I had.

11 MR. TOWNSEND: Likewise, I don't think that I
12 will be even the full 20 minutes that I set aside.

13 JUDGE WALLACE: That's something to bring up
14 after lunch. Okay, it is now 12:46. Let's take an
15 hour for lunch.

16 (Whereupon the hearing
17 was in recess for lunch
18 until 1:46 p.m.)

19

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22

1 AFTERNOON SESSION .

2 JUDGE WALLACE: Back on the record. Does
3 anyone have any additional cross of Mr. Clark?

4 MR. TOWNSEND: Yes, Your Honor.

5 JUDGE WALLACE: Mr. Clark, would you take the
6 stand again, please? Okay, then, Mr. Townsend.

7 MR. TOWNSEND: Thank you, Judge.

8 CROSS EXAMINATION

9 BY MR. TOWNSEND:

10 Q. On behalf of Constellation New Energy,
11 Inc., Direct Energy Services, LLC, MidAmerican
12 Energy Company and People's Energy Services
13 Corporation, US Energy Savings Corp., good
14 afternoon, Mr. Clark.

15 A. Good afternoon, Mr. Townsend.

16 MR. TOWNSEND: We have been referred to, if you
17 would like, Your Honor, to the Coalition of Energy
18 Suppliers.

19 JUDGE WALLACE: That would be much preferable.

20 Q. Thank you. This morning you were asked
21 some questions by the Cook County State's Attorney's
22 office regarding the upcoming general rate case

1 that's going to be filed. Do you recall those
2 questions?

3 A. Yes.

4 Q. And in those questions --

5 JUDGE WALLACE: All right. I hope you have
6 your own questions because I don't really want you
7 crossing on cross.

8 MR. TOWNSEND: Not at all. I was going to ask
9 him if he had the ability to answer that one
10 question. I did want to ask on that line of
11 questioning.

12 Q. But have you been able to determine what
13 the size of the increase is that you are going to be
14 requesting in the filing that you are going to be
15 making this week?

16 A. I don't have that number available as we
17 speak. I do expect to have it later this week and
18 will give it to the judge as timely as I can.

19 Q. You had indicated that you thought that it
20 was going to be a single digit across the board rate
21 increase?

22 A. That is correct.

1 Q. When you say single digit, how are you
2 coming to that percentage?

3 A. Well, I get there by saying there will be a
4 number between 1 and 9.

5 Q. For the benefit of the attorneys in the
6 room, thank you.

7 A. I also obviously have been a part in
8 putting the distribution rate case together. But
9 let me say this. Whatever the ultimate number is,
10 and I will provide it to the judge later this week,
11 and whatever the ultimate rate case might be, one of
12 the things that we are committed to is the
13 mitigation of any kind of rate shock. I realize
14 that that's a concern and reflected on some of the
15 questions as to earlier today. The numbers are what
16 they are, but we are open to mitigation strategies.
17 The Staff has already submitted one.

18 Q. And actually that's not where I was going
19 with the question. I was just trying to figure out,
20 when you say a single digit increase, is that on the
21 overall bill or is that on the delivery services
22 component of the bill?

1 A. That is the delivery service component.
2 That is all that we will be filing in our -- that is
3 the portion that we are filing in our distribution
4 case. Ultimately, the overall increase will be
5 obviously impacted by the supply component.

6 Q. So delivery services rates are going to be
7 proposed to increase by less than ten percent?

8 A. That is correct.

9 Q. Could you turn in your testimony to lines
10 102 to 105? Let me know when you are there. I have
11 some questions from that question and answer.

12 A. On page 5, yes, I am there.

13 Q. Would you agree that the Commission should
14 act to promote the development of competition in
15 both the retail and the wholesale electric markets
16 in Illinois?

17 A. Certainly the retail market and to the
18 extent that it can most of the wholesale market is
19 under FERC jurisdiction, not most of it, the
20 wholesale market is under FERC jurisdiction. But to
21 the extent that it can facilitate that, yes, it
22 should.

1 Q. And would you agree even beyond this
2 proceeding the Commission should continue to explore
3 ways to promote competition in the Illinois retail
4 electric market?

5 A. Yes.

6 Q. Could you turn to your testimony at lines
7 268 to 274 and let me know once you are there?

8 A. Okay.

9 Q. There you say that now is the right time to
10 move forward. What do you mean by that?

11 A. I mean that, number one, the purchase
12 agreements that Commonwealth Edison Company has to
13 secure supply all end at the end of December 31,
14 2006. We have to have a process in place that
15 clearly identifies the appropriate procedure for us,
16 for Commonwealth Edison, to go out and secure supply
17 that we need to obviously continue to provide
18 reliable service to our customers.

19 Q. And at line 271 when you say that we
20 believe the market is ready to advance, what did you
21 mean by that?

22 A. I believe that we are a part of a

1 reasonable transmission organization. I believe
2 that based on what I have seen demonstrated over the
3 last year and a half, there are a number of market
4 participants who are ready to come into Illinois and
5 compete in an auction process. I think that the
6 fact that we are now a part of a much larger grid,
7 that being PJM, positions this state and the
8 utilities in this state to participate in an auction
9 that will reflect a true competitive market price.

10 Q. In your next sentence you talk about the
11 importance of certainty in the process. Do you see
12 that?

13 A. Yes.

14 Q. Why is it important to have certainty in
15 order to be able to bring the benefits of efficient
16 competition to customers?

17 A. I believe that if you don't have certainty,
18 that those suppliers who are bidding in the process
19 are likely to consider that a greater risk and
20 assign a cost to that risk and ultimately drive,
21 potentially drive, the price of the commodity up.

22 Q. Would you agree that it is important to

1 have certainty in both the wholesale and the retail
2 market in order to have the benefits of efficient
3 competition be realized by consumers?

4 A. I believe that certainty in all the markets
5 is a very good thing to have, yes.

6 Q. At lines 281 to 282 you indicate that this
7 type of auction has a proven track record. Why is
8 it important for the process used that the
9 Commission approves in this proceeding to have a
10 proven track record?

11 A. Well, I think that that part of my
12 testimony is simply intended to affirm what we
13 believe to be a good process, a tried and tested
14 process, and that mainly is the process that has
15 been employed in New Jersey that we are recommending
16 in Illinois. Our proposal would duplicate the New
17 Jersey model.

18 Q. So it is important for the Commission to
19 approve processes within this case that have been
20 experienced somewhere in the market, even if it is
21 in another state?

22 A. I think that wherever there is experience,

1 that experience provides a road map. That
2 information is very useful on what we are trying to
3 implement here in the state of Illinois.
4 Ultimately, the Commission will make its own
5 decision on what that model should look like. We
6 have made the recommendation.

7 Q. What role did you play in developing the
8 retail rules associated with ComEd's auction
9 proposal?

10 A. The retail rules, if I understand you
11 correctly, my role in the entire, what we call, Post
12 '06 Initiative has always been consistently the
13 same. I have been the principal executive inside
14 both ComEd and Exelon in developing the policies and
15 strategies and positions that Exelon has ultimately
16 taken and presented that has resulted in our auction
17 proposal.

18 Q. Are you familiar with the 30-day enrollment
19 window in the ComEd proposal?

20 A. Yes.

21 Q. Did ComEd conduct a customer survey to
22 determine what enrollment window customers would

1 prefer?

2 A. That type of detail, the answer is I know
3 that we did in fact do a canvass. We did a canvass
4 and did some surveying. What I don't recall
5 precisely, and Bill McNeil can tell you that in
6 greater detail, all of the items and all of the
7 detail associated with our proposal.

8 Q. Do you know whether that survey was a part
9 of the record in this proceeding? Or you said you
10 don't know whether a survey was actually conducted?

11 A. No. We canvassed, we being ComEd and Bill
12 McNeil under my direction, canvassed a number of
13 states in making some determination of what we were
14 going to -- trying to find out, you know, the best
15 practices, I guess is what we would refer to it as.

16 Q. I am sorry. I didn't mean to interrupt but
17 when you said canvass, it wasn't a customer survey
18 type of canvassing; it was just looking to see what
19 was out there?

20 A. I am not aware if we went back to
21 individual customers to ask them their individual
22 preferences.

1 Q. Why not?

2 A. Well, I don't know that an auction process
3 can be designed to take into consideration these
4 individual customers. It is a statewide process
5 intended to provide statewide benefits. We looked
6 at states. We did not necessarily -- I am sure
7 there may be some customer input. I don't know it.
8 But our focus was statewide.

9 Q. Are you aware of the customer input on that
10 issue that was submitted in this docket from BOMA?

11 A. In general, yes.

12 Q. Are you aware that ComEd's current PPO has
13 a 75-day enrollment window?

14 A. Yes.

15 Q. Has ComEd performed any analysis to
16 determine the impact, if any, that a longer
17 enrollment window would have upon rates charged to
18 customers?

19 A. I think that question has to be directed to
20 Bill McNeil.

21 MR. TOWNSEND: That's all I have.

22 JUDGE WALLACE: Anyone else? Mr. Robertson.

1 CROSS EXAMINATION

2 BY MR. ROBERTSON:

3 Q. Good afternoon, Mr. Clark.

4 A. Good afternoon, Mr. Robertson.

5 Q. I represent the Illinois Industrial Energy
6 Consumers and I have attempted, you probably won't
7 believe it, to cut out some of the cross based on
8 what I have heard today and hopefully we can finish
9 this up quickly. Would you -- now, as I understand
10 it, ComEd is a company which is primarily engaged in
11 the transmission and distribution of electric power
12 and energy, is that correct?

13 A. That is correct.

14 Q. So they would be considered like a
15 wires-only company?

16 A. That is correct.

17 Q. And would you agree that ComEd is not
18 permitted to compete to serve the electrical load of
19 retail customers in a service territory under the
20 Commission's IDC rules?

21 A. That is correct.

22 Q. And would you agree that ComEd does not

1 plan to compete for retail customers and electrical
2 load in its service territory or the service
3 territory of any other electric utility in Illinois?

4 A. That is correct.

5 Q. And would that be true, ComEd is not going
6 to do that in other states as well, is that correct?
7 They are not going to compete for electrical, retail
8 electric customers and retail electric load in other
9 states?

10 A. That would be correct.

11 Q. Now, also earlier today you were asked
12 about legal services provided by Exelon services,
13 business services company. Does Exelon provide
14 legal services to ComEd and ExGen?

15 A. Yes.

16 Q. Does Exelon Legal Services provide legal
17 services to Exelon Energy?

18 A. Yes.

19 Q. Does Exelon Business Services provide legal
20 services to ComEd in reference to this particular
21 case?

22 A. Yes.

1 Q. And to your knowledge has it provided legal
2 services to ExGen and Exelon Energy in relation to
3 this particular case?

4 A. Yes.

5 Q. Now, would you agree that ExGen would
6 benefit from an auction which provides all bidders
7 with a market clearing price?

8 A. I believe all generators would have the
9 identical benefit, including ExGen.

10 Q. Would you agree that the lowest cost
11 generator and the most efficient generator would be
12 the one who would have the greatest benefit from a
13 market clearing price?

14 A. Yes.

15 Q. Would you agree that the higher the market
16 clearing price produced by the auction, the greater
17 the potential economic benefit to ExGen for
18 participating in the auction?

19 A. Yes.

20 Q. Would you agree that ComEd should be
21 indifferent as to which ARES a retail customer takes
22 its electric power and energy from?

1 A. I am not exactly sure how you are defining
2 indifferent, but my response would be that
3 Commonwealth Edison Company will look to secure
4 supply through a competitive process, is certainly
5 our hope, to whatever mix of generators provide the
6 lowest cost. All right.

7 Q. And I may have stated my question
8 unclearly. What I am asking is, would ComEd as a
9 wires-only company be indifferent as to what
10 particular alternative retail electric supplier an
11 end use customer may elect to take service from?

12 A. That would be the decision of the end use
13 customer.

14 Q. And, therefore, ComEd would be indifferent?

15 A. Yes.

16 Q. And would you agree that ComEd as a
17 wires-only company should also be indifferent as to
18 whether a customer even takes service from an
19 alternative retail electric supplier?

20 A. That's a yes or no answer, a yes and no
21 answer. If I can --

22 Q. I am going to be different today. I am

1 going to let you explain your answer, at least one
2 time.

3 A. Yes, and to the extent that any generator
4 that provides the lowest cost should be the one that
5 should be given the opportunity to provide that
6 price to our customers. So in that regard,
7 absolutely. No, in the sense that we are very
8 concerned with a number of issues, for example, the
9 credit worthiness of different generators. So it is
10 not a carte blanche we are indifferent. We are
11 indifferent assuming all things are equal.

12 Q. And, again, I may have not been as clear in
13 my question as perhaps I should, and my question
14 really went to the customer's decision to purchase
15 power and energy from an alternative retail electric
16 supplier as opposed to from ComEd through the
17 auction process. And my question is, all else equal
18 wouldn't ComEd be indifferent as to whether or not,
19 if your proposal is adopted, a customer purchases
20 electric power and energy from an alternative retail
21 electric supplier or through the ComEd auction
22 price?

1 A. I think that would be the customer's
2 choice. I don't think we have anything to say about
3 it.

4 Q. And again, therefore, ComEd would be
5 indifferent as to what choice the customer made, is
6 that correct?

7 A. I couldn't look on the word indifferent
8 because I am interpreting it different. But that's
9 a customer decision. Customers have choice. I
10 don't think we play a role in that choice.

11 Q. And as long as Commonwealth Edison receives
12 the cost acquiring the supply through the auction
13 and as long as ComEd is paid whatever the
14 appropriate rate is for delivery service, it really
15 makes no difference to ComEd whether the power and
16 energy comes from the auction or the customer or it
17 comes from the alternative retail electric supplier?

18 A. I think it is essential that, one, we are
19 allowed to recover our investment under the delivery
20 side for all the obvious reasons that you invest in
21 the infrastructure. So that part of the answer is
22 absolutely yes. And to the extent that customers

1 secure supply by some means other than going through
2 Commonwealth Edison, that is strictly a customer
3 choice.

4 Q. And I am sorry to keep dwelling on this
5 point but we may be in perfect agreement. I take
6 that to mean that as long as Commonwealth Edison
7 recovers its costs of providing the service, whether
8 it is power and energy and delivery or whether it is
9 just delivery, it makes no difference to ComEd
10 whether a customer takes service from an alternative
11 electric retail supplier or buys its power and
12 energy through the ComEd auction?

13 A. Mr. Robertson, I really don't know how to
14 answer that question differently than what I already
15 have.

16 Q. All right. Would you agree that, all else
17 equal, the lower the market clearing price, the
18 greater the potential economic benefit to ComEd as a
19 wires-only company?

20 A. I believe that would essentially be correct
21 because we would be passing through the lowest cost
22 to our customers.

1 Q. And in theory there would be more units of
2 electricity delivered; therefore, there would be
3 more delivery service rentals, correct?

4 A. That volume analysis seems reasonable.

5 Q. And now as I understand the ComEd proposal,
6 one of the desires of ComEd is to have a process put
7 in place that would avoid after-the-fact prudence
8 reviews, is that correct?

9 A. That is correct.

10 Q. And what is ComEd's interest in avoiding
11 what it characterizes as after-the-fact prudence
12 reviews?

13 A. Part of the reason or one of the primary
14 reasons is to avoid the uncertainty associated with
15 an after-the-fact prudency review. It is ComEd's
16 belief that an after-the-fact prudency review
17 creates the element of uncertainty, makes the
18 transaction even more risky, and ultimately risks
19 the transfers, we believe, with premiums which we
20 believe translate to potentially higher costs being
21 bid into the process.

22 Q. Now, would you agree that all Illinois

1 retail electric customers should have uninhibited
2 access to an efficient and competitive market?

3 A. Yes.

4 Q. And would you agree that that is both the
5 wholesale and the retail market?

6 A. Yes.

7 Q. And your proposal, as I understand it, you
8 believe will give customers uninhibited and
9 efficient access to the benefits of the wholesale
10 market, is that correct?

11 A. Well, if you are talking about end use
12 customers, I don't know the likelihood of, for
13 example, individual residential customers having
14 direct access to the wholesale market. But, sure,
15 with that caveat I think the answer is yes.

16 Q. I am talking about the benefits, not the
17 market itself.

18 A. Then the answer is yes.

19 Q. Now, do you believe that the Illinois act
20 was intended to insure that all customers receive
21 access to the benefits of the wholesale market?

22 A. The Illinois act wanted to insure that all

1 customers enjoyed the benefits of competition. And
2 I think that it implicitly implies both wholesale
3 and retail markets.

4 Q. Do you believe it is appropriate to raise
5 the price of electricity beyond what would otherwise
6 be considered the market price in order to encourage
7 competition for competition's sake?

8 A. I believe that -- I believe the only
9 appropriate price passed through the customers
10 should be the market clearing price, whatever that
11 is.

12 Q. Now, as I understand it, the ComEd proposal
13 is modeled on the New Jersey vertical tranche
14 descending clock auction?

15 A. Yes, it is.

16 Q. And I assume since your testimony refers to
17 it that you are generally familiar with the elements
18 of the New Jersey auction?

19 A. That would be an apt description, generally
20 familiar.

21 Q. Probably give you a way out for this next
22 line of questioning. That's all right. Now, your

1 knowledge of the New Jersey auction was sufficient
2 to allow you to compare it to the objectives of the
3 Post-2006 process?

4 A. That is correct.

5 Q. Now, you testified that the New Jersey
6 model used all 18 objectives?

7 A. That is correct.

8 Q. And you agree that among these objectives
9 is the need for regulatory review?

10 A. Yes.

11 Q. And would you agree that it would be
12 appropriate for the Commission to periodically
13 review the results of the auction to see if in fact
14 it was providing, I think you used this term earlier
15 today, lowest available price in comparison to other
16 methodologies?

17 A. I would agree that ultimately it is the
18 Commission's decision to make a determination on
19 what it considers an appropriate review. It is our
20 proposal that that review process take place in the
21 hearings that will be ongoing in the next several
22 weeks, and that the Commission use this process to

1 make a determination on what the rules are going to
2 be, what the procedures are going to be and what
3 other appropriate safeguards needed so that indeed
4 we can inject certainty.

5 Q. So your suggestion is, and if I understand
6 it, it is ComEd's position then that the Commission
7 should never again consider whether or not the
8 process of the auction is appropriate in producing
9 the lowest available price?

10 A. No, that is not my position.

11 Q. Okay. And then you would agree that they
12 should periodically do that then?

13 A. I believe that the Commission would
14 exercise its authority in any way that it deemed
15 necessary to insure that a process that they have
16 approved in fact is working the way they intend.

17 Q. Would you agree that if they did not do
18 that, they would be deficient in their public
19 responsibilities?

20 A. I don't personally want to make a judgment
21 on what would be a determination of whether the
22 Commission is or is not deficient. I expect and

1 believe they will exercise their responsibilities
2 appropriately.

3 Q. And it would be within their power, would
4 it not, to initiate periodic reviews to determine
5 whether in fact the auction process, if they approve
6 it in the first instance, continues to be the
7 appropriate process for acquiring power and energy,
8 is that correct?

9 A. I think it is correct that the Commission
10 would retain the ability to go back and look at a
11 process if they felt that process was not working
12 appropriately.

13 Q. And would you agree with me that to the --
14 it is not absolutely necessary to, based on your
15 experience, to conduct a full-blown rate proceeding
16 in order to evaluate a process such -- a power
17 acquisition process such as the auction?

18 A. Well, I think that a full-blown proceeding
19 is going to be occurring over the next several weeks
20 and months to make just that determination.
21 Simultaneously, after we file our delivery service
22 tariff case that will proceed in the normal

1 regulatory timeline.

2 Q. I am talking about this potential review
3 after the fact, if you will, of the auction process.
4 And would ask again whether or not you would agree
5 that it is not absolutely necessary that the
6 Commission conduct the full-blown -- and by
7 full-blown I mean an eleven-month rate case
8 proceeding -- in order to look at whether or not the
9 auction should be continued under certain
10 circumstances?

11 A. I think that as I indicated earlier, that
12 kind of decision is fully up to the Commission. I
13 assume and expect they will exercise the statutory
14 authority in whatever manner they deem appropriate.

15 Q. And are you aware that New Jersey conducts
16 an annual review?

17 A. Yes.

18 Q. Now, I am going to direct you to lines 271
19 and 274 of your direct testimony.

20 A. Yes.

21 MS. DALE: Excuse me, Your Honor, this is
22 Chicago. We cannot hear Mr. Robertson.

1 MR. ROBERTSON: How is that?

2 MS. DALE: That's fine. Thank you, Eric.

3 MR. ROBERTSON: Most times people don't say
4 that to me.

5 Q. Mr. Clark, is it your belief that ComEd's
6 auction proposal will provide the benefits of
7 efficient competition by giving ComEd and its end
8 use customers access to a potential large number of
9 wholesale electric suppliers?

10 A. It is.

11 Q. And do you know approximately or does ComEd
12 have an estimate of the number of wholesale
13 suppliers that customers may be given access to?

14 A. I don't have a precise number. It would be
15 in my judgment double digits.

16 Q. Okay. Somewhere between 1 and 20?

17 A. No, somewhere greater than ten.

18 Q. Would you be willing to accept subject to
19 check that in the company's response to IIEC Data
20 Request 3.14, Bates Number CECO 0002994, the company
21 identified 28 potential bidders?

22 A. Yes.

1 Q. Now, referring to lines 52 to 55 of your
2 direct testimony, there you indicate that you had a
3 role in the adoption of the restructuring law or the
4 1997 Act, is that correct?

5 A. That is correct.

6 Q. And based on your participation, do you
7 believe that legislators had an expectation that
8 retail choice would be implemented more widely in
9 the United States than has ultimately come to pass?

10 A. I don't know that. I think that they had
11 an expectation that competitive markets would
12 blossom in the state of Illinois and it has.

13 Q. Now, would you -- as I understand it, I
14 think you used the term flowered, is that right? In
15 Illinois, retail competition has flowered in
16 Illinois?

17 A. Flowered?

18 Q. Or blossomed?

19 A. Blossomed, thank you.

20 Q. You would think someone from southern
21 Illinois would know the difference between a flower
22 and a blossom. Anyway, would you -- I have heard

1 ComEd witnesses in other proceedings describe the
2 retail market in the ComEd portion of Illinois as a
3 robust retail market. Would you agree with that?

4 A. Yes.

5 Q. And that robust market has developed over
6 the last five years?

7 A. More or less.

8 Q. And would you agree that that robust market
9 has developed at the same time ComEd was offering
10 the PPO option?

11 A. Yes.

12 Q. And would you agree that that robust market
13 blossomed or developed at the same time ComEd was
14 offering bundled service to customers three
15 megawatts and over?

16 A. Yes.

17 Q. So would you agree that ComEd's offering of
18 power and energy to end use customers three
19 megawatts and over has not impaired the development
20 of the robust retail market as it exists today in
21 northern Illinois?

22 A. Yes.

1 Q. Now, could you refer to Exhibit 1.6,
2 please?

3 JUDGE WALLACE: You need to wrap it up,
4 Mr. Roberston.

5 MR. ROBERTSON: You just reminded me in time.
6 This is my last line of cross.

7 Q. Do you have that exhibit before you, Mr.
8 Clark?

9 A. Yes, I do.

10 Q. Now, that particular document is a
11 Memorandum of Understanding that was signed by a
12 number of parties, is that correct?

13 A. That is correct.

14 Q. Would you agree that all of the parties who
15 signed that agreement but one were suppliers of
16 retail electricity?

17 A. Yes.

18 Q. And would you agree that as a general
19 proposition that those suppliers would think that
20 the higher the prices charged by ComEd for its power
21 and energy, the more competitive they could be?

22 A. I have to give a qualified answer, if I

1 could.

2 Q. I will take a chance.

3 A. I think that head room is important for
4 competitors. And if there is not enough head room,
5 you have less competition.

6 Q. And also with -- there was one customer
7 representative that signed it, the agreement as
8 well, is that correct?

9 A. Yes, that is correct.

10 Q. And as I understand it, that particular
11 customer group is also a customer of Exelon
12 Generation, is that correct?

13 A. I believe that was and I think that still
14 is correct.

15 MR. ROBERTSON: No further questions.

16 JUDGE WALLACE: Any redirect?

17 MR. HANZLIK: Yes.

18 REDIRECT EXAMINATION

19 BY MR. HANZLIK:

20 Q. Mr. Clark, Mr. Rosen asked you some
21 questions about long-term PPAs that ExGen has that
22 go beyond 2007. If I may approach the witness I

1 would like to show him page 17 which Mr. Rosen
2 showed to him.

3 A. Yes.

4 Q. If you would take a look at that page, that
5 refers to long-term PPAs that ExGen has that goes
6 beyond 2007 with Kincaid Generation, Lincoln
7 Generation, Elwood and other generations, is that
8 true?

9 A. That is true.

10 Q. Do you know whether those are PPAs under
11 which ExGen sells or buys power from those
12 generators?

13 A. Sells.

14 Q. And did Mr. Rosen show you any -- strike
15 that. Do you know whether there are any PPAs under
16 which ComEd buys power beyond 2006?

17 A. I know of none.

18 Q. Okay. Are there any PPAs that you are
19 aware of -- well, I will withdraw that question.
20 Thank you. Let me just read you a statement from
21 page 17 under Long Term Contracts which is
22 immediately above the listing of the sellers that we

1 identified and are shown on that filing. I read,
2 "In addition to energy produced by owned generation
3 assets, generation" -- and there it refers to ExGen
4 -- "sells electricity purchased under the long term
5 contracts described below." Would that indicate to
6 you that ExGen is purchasing power from these
7 generators?

8 MR. ROSEN: Objection to the characterization
9 in that statement. Trying to rehabilitate his own
10 witness. The statement says what it says.

11 MR. HANZLIK: That's why I read the statement,
12 so that the record is clear.

13 MR. ROSEN: It says sells electricity purchased
14 under the long term contract, sells.

15 MR. HANZLIK: It doesn't say that. It says
16 electricity purchased under the --

17 JUDGE WALLACE: Let's go back. Read the
18 statement.

19 MR. ROSEN: It says in addition --

20 JUDGE WALLACE: No, no, it is his question. It
21 is your piece of paper but it is his question.

22 MR. ROSEN: I read it better, though.

1 BY MR. HANZLIK:

2 Q. Mr. Clark, let me read it. Under the topic
3 or the heading Long Term Contracts, "In addition to
4 energy produced by owned generation assets,
5 generation" -- referring to Exelon Generation --
6 "sells electricity purchased under the long term
7 contracts described below:" And then there are a
8 listing of generating companies with the location,
9 expiration and capacity indicated. Does that
10 indicate to you that ExGen purchases power from
11 those generators and then resells them?

12 MR. ROSEN: Objection to the form of the
13 question, Your Honor.

14 JUDGE WALLACE: Overruled.

15 MR. ROSEN: Plus the witness had already
16 answered the question that they sell to those
17 particular companies. He is trying to impeach his
18 own witness, Your Honor.

19 JUDGE WALLACE: Mr. Clark?

20 THE WITNESS: Your Honor, I hate to violate
21 your rule but would you please give me the last part
22 of that question again?

1 BY MR. HANZLIK:

2 Q. Sure. Under the heading Long Term
3 Contracts, "In addition to energy produced by owned
4 generation assets, Exelon Generation sells
5 electricity purchased under the long term contracts
6 described below:" And then there is a listing of
7 sellers and I can show it to you again, location,
8 expiration dates. Does that indicate to you that
9 Exelon purchases electricity from those sellers and
10 then resells that electricity?

11 A. Yes.

12 Q. Thank you. You also had talked about the
13 efficiency of the nuclear generation stations in a
14 series of questions that you were asked. Do you
15 remember that line of questioning?

16 A. Yes, I do.

17 Q. Is nuclear generation the most efficient
18 way to provide peaking service?

19 A. No, it is not.

20 Q. Is it the most efficient way to provide
21 cycling service?

22 A. No, it is not.

1 Q. Is it the most efficient way to provide
2 load following service?

3 A. No, it is not.

4 Q. What type of product is ComEd proposing to
5 acquire through the Illinois auction proposal?

6 A. All three, base load, intermediate and
7 peaking.

8 Q. Is that what is referred to as a full
9 requirements product?

10 A. That is correct.

11 Q. And can you serve a full requirements load
12 with just nuclear generators?

13 A. No, you cannot, and my response was only --
14 the efficiency response was related to base load. I
15 thought I said that.

16 Q. You may have and I appreciate that
17 clarification. You were also asked questions about
18 ComEd's motives in making its proposal, Illinois
19 auction proposal, in this proceeding. Would you
20 please describe why ComEd is making this proposal to
21 the Commission today?

22 A. Yes. The Illinois Restructuring Law of

1 1997 contemplates, fully expects and endorsed that
2 the best way to secure supply long term for all
3 customers in Illinois was through some type of a
4 competitive market price, market base process.
5 Since 1997 we have seen the market devolve in
6 Illinois primarily and almost exclusively views at
7 this point by the commercial and industrial
8 customers. The contemplation, however, is the
9 benefits of competition over the long run should be
10 made available to all customers. I know of no
11 better way of bringing the benefits long term into
12 the residential class than providing an opportunity
13 for bidders, and I think there was some question of
14 how many generators did we think would bid and the
15 number was more than 2,000 and I think there are 28,
16 that these bidders competing for the load of the
17 ComEd customers would ultimately enter into the
18 reverse auction process but ought to constantly push
19 that price down until it clears at the lowest
20 possible price that would be passed onto those
21 customers.

22 In the canvassing a number of states, in

1 going through the process at workshops and seminars
2 at the Illinois Commerce Commission, through our own
3 internal review, I know of no better process to
4 provide long term competitive pricing, market base
5 pricing, to our customer class than the proposal
6 that we are submitting to this Commission.

7 Q. Thank you. You were also asked questions
8 about whether RESs are offering services to
9 residential customers. If I recall, your answer was
10 no, not at the present time. Then you were also
11 asked if RESs were also offering services to
12 residential and small commercial customers. Do you
13 know if some of ComEd's small commercial customers
14 have switched suppliers?

15 A. It is my understanding that some of them
16 have. If I had to recall a particular group, I
17 believe that organizations like the Illinois Retail
18 Merchant's Association which has some smaller
19 customers in it have switched to an alternative
20 supplier than ComEd.

21 Q. You were also asked a series of
22 hypothetical questions about the auction clearing

1 price resulting in a rate increase of 20 percent, 30
2 percent or 40 percent. What is the company's
3 position if that were to occur?

4 A. Number one, obviously I don't know what the
5 results of the auction will be and it will, I
6 believe, represent the lowest market clearing price
7 available. What I was not asked and I need to make
8 clear is that we obviously care about rate shock.
9 And to the extent that we are faced with a situation
10 that could create rate shock, we are very willing to
11 enter into a mitigation strategy. The Commission
12 has suggested a process, a thought process along
13 that line, and then we are also looking internally.

14 Q. Thank you. One final question,
15 Mr. Robertson asked you some questions about the BSC
16 legal services, and let me just ask you this. Are
17 the attorneys who are working with Commonwealth
18 Edison Company to develop the auction proposal and
19 with respect to this proceeding the BSC attorneys,
20 are they also working with Exelon and Exelon
21 Generation at the same time?

22 A. Absolutely not. We have very, very rigid

1 fire walls within Commonwealth Edison and within
2 Exelon's shared services. Our legal department is
3 not unlike major law firms when they represent
4 multiple clients, and there is strict adherence to
5 those.

6 MR. HANZLIK: No further questions.

7 JUDGE WALLACE: Does anyone have any recross?

8 MR. GIORDANO: Your Honor, I just have one or
9 two on the rate check points.

10 JUDGE WALLACE: All right.

11 RECROSS EXAMINATION

12 BY MR. GIORDANO:

13 Q. Mr. Clark, you mentioned the Commission
14 Staff rate mitigation plan. Are you aware that the
15 plan, according to ComEd, the reaction of ComEd
16 witnesses is to not include non-residential space
17 heating customers in that mitigation plan?

18 A. Yes, I am aware of that.

19 Q. And are you willing to reconsider that
20 position based on the comments he just made, that
21 you are reviewing this matter internally?

22 A. I am willing to restate what I said earlier

1 and that is that we are conscious, very conscious of
2 mitigating rate shock.

3 Q. And why would you not include
4 non-residential space heating customers as a class
5 in the rate mitigation claim?

6 A. That is the position that we have taken up
7 to this point, Mr. Giordano. You are asking me now
8 and I have responded to the overall issue of
9 mitigating rate shock and I stand on my response.

10 Q. Meaning that the company is going to
11 reconsider their position related to the rate shock
12 on non-residential space heating customers?

13 A. Mr. Giordano, I thought I answered the
14 question. I don't know how to answer it differently
15 from the two answers I have just given you. It will
16 be the same answer. Commonwealth Edison Company,
17 myself as its principle officer, absolutely is
18 conscious of rate shock. I feel an obligation to
19 mitigate rate shock to the extent that we have.

20 Q. I guess the reason I am asking you for a
21 more definitive answer is we are, you know, in the
22 hearings now and when will a decision be made by

1 Commonwealth Edison, a final decision, on whether to
2 support mitigation of the rate shock for the
3 non-residential space heating customers?

4 A. I believe that that question is going to
5 be -- can be more appropriately addressed when we
6 have to file our DST rate filing which we will be
7 filing this week, I believe, and that issue I think
8 will be more properly debated and discussed and make
9 a final determination in that docket.

10 MR. GIORDANO: Thank you.

11 JUDGE WALLACE: Anyone else?

12 MR. GOLDENBERG: No.

13 JUDGE WALLACE: Thank you, Mr. Clark. You may
14 step down.

15 (Witness excused.)

16 MR. HANZLIK: Your Honor, I would like to renew
17 my motion that Exhibit 1.0, the testimony of
18 Mr. Clark, and attached Exhibits 1.1 through 1.6 be
19 admitted into evidence.

20 JUDGE WALLACE: All right. Exhibit 1.0, 1.1,
21 1.2, 1.3, 1.4, 1.5 and 1.6 are admitted.

22 (Whereupon ComEd

1 Exhibits 1.0, 1.1, 1.2,
2 1.3, 1.4, 1.5 and 1.6
3 were admitted into
4 evidence.)

5 MR. GOLDENBERG: Can I just raise a procedural
6 issue?

7 JUDGE WALLACE: Yes, Mr. Goldenberg.

8 MR. GOLDENBERG: Rather than go through similar
9 objections, similar arguments with each of the
10 witnesses, would it be possible to have a standing
11 objection to the Post '06 issues with the various
12 witnesses for the reasons we argued before you this
13 morning? Would that be considered as you consider
14 each of them as opposed to us making an objection
15 and arguing each time?

16 JUDGE WALLACE: Well, I would prefer no more
17 arguing. We will just consider in terms of all the
18 witnesses --

19 MR. GOLDENBERG: That were subject to the
20 motion. Because rather than repeatedly take up Your
21 Honor's time with the same argument, we are just
22 concerned that we not have waiver and the

1 appropriate time on objecting to issues is at the
2 time of hearing.

3 JUDGE WALLACE: Okay. Unless there is an
4 objection I will note that the motion to strike, we
5 don't need to renew it every time. It will not be
6 considered a waiver of anyone's rights in that
7 regard.

8 While we are getting ready for the next
9 witness, we had to experiment on Mr. Clark,
10 unfortunately. But the reason that Judge Jones and
11 I requested a schedule is so that we could keep on
12 schedule. We are now way off schedule. You gave
13 cross examination estimates. You are going to be
14 held to those. I will cut you off. We have to keep
15 moving along.

16 With that said, also, everyone, turn your
17 cell phones off. Put them on hold or something or
18 put them out the door.

19 And with that, Mr. Rippie, your next
20 witness?

21 MR. RIPPIE: The company's next witness is
22 Ms. Elizabeth Moler.

1 ELIZABETH A. MOLER

2 called as a Witness on behalf of Commonwealth Edison
3 Company, having been first duly sworn, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. RIPPIE:

7 Q. Ms. Moler, could you please state and spell
8 your full name for the record.

9 A. My name is Elizabeth, E-L-I-Z-A-B-E-T-H,
10 Anne, Moler, M-O-L-E-R. My friends call me Betsy,
11 B-E-T-S-Y.

12 Q. I guess I have to call you Betsy now,
13 right? Have you in fact prepared for submission to
14 the Illinois Commerce Commission in this docket
15 direct testimony?

16 A. Yes, sir, I have.

17 Q. And is that direct testimony a document
18 that has been marked Commonwealth Edison Exhibit 2.0
19 and been given the e-Docket designation -- I won't
20 ask you about the e-Docket designation. Has it been
21 marked ComEd Exhibit 2.0?

22 A. Yes, it has.

1 MR. RIPPPIE: For the record, Your Honor, that
2 is part of the filing under e-Docket 0955889.

3 Q. And do you have any additions or
4 corrections that you wish to make to that document
5 at this time?

6 A. No, I do not.

7 Q. If I were to ask you the same questions
8 that appear on Commonwealth Edison Exhibit 2.0
9 today, would you give me the same answer?

10 A. Yes, I would.

11 MR. RIPPPIE: Thank you very much. I have no
12 further questions for this witness and I would offer
13 into evidence Commonwealth Edison Exhibit 2.0.

14 JUDGE WALLACE: Is there any objection? All
15 right. ComEd Exhibit 2.0 is admitted.

16 (Whereupon ComEd
17 Exhibit 2.0 was
18 admitted into
19 evidence.)

20 Does anyone have any cross of Ms. Moler?
21 Ms. Hedman, do you wish to start?

22 MS. HEDMAN: Thank you, Your Honor.

1 JUDGE WALLACE: Why don't you pull one of those
2 mics down? Is that the one we unplugged?

3 (Whereupon there was
4 then had an
5 off-the-record
6 discussion.)

7 JUDGE WALLACE: Back on the record.
8 Ms. Hedman.

9 MS. HEDMAN: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MS. HEDMAN:

12 Q. Good afternoon, Ms. Moler. My name is
13 Susan Hedman and I am with the Office of the
14 Attorney General and I represent the people of
15 Illinois in this docket.

16 A. Good afternoon.

17 Q. Good afternoon. Ms. Moler, on lines 2 and
18 3 of page 1 of your prefiled testimony you have
19 testified that you are currently executive vice
20 president for governmental and environmental affairs
21 and public policy for Exelon, is that correct?

22 A. Yes, it is.

1 MS. HEDMAN: Your Honor, may I approach the
2 witness?

3 JUDGE WALLACE: Yes.

4 MS. HEDMAN: I am giving the witness a number
5 of documents that were admitted into evidence this
6 morning I believe you will find familiar.

7 MR. RIPPPIE: Sadly, I do not have a copy of it.

8 MS. HEDMAN: Oh, dear.

9 THE WITNESS: One of these is a duplicate.

10 MR. RIPPPIE: If I could just borrow somebody
11 else's copy. Thank you.

12 BY MS. HEDMAN:

13 Q. Ms. Moler, please review AG Cross Exhibit 1
14 which was admitted into evidence this morning. Does
15 the organizational chart in this exhibit depict
16 Exelon's corporate structure?

17 A. It's current corporate structure, yes,
18 ma'am.

19 Q. And in your role with Exelon Corporation I
20 take it that you are an executive vice president of
21 the entity that appears at the top of the chart
22 which is labeled Exelon, is that correct?

1 A. No, technically I am employed by Exelon
2 Business Services Company as required by PUHCA.
3 Exelon itself has no employees. Those of us who
4 serve multiple business units are required to be in
5 the service company via the public utility holding
6 company. That's what I meant.

7 Q. And Commonwealth Edison for which you are
8 testifying in this proceeding is an Exelon operating
9 company in Illinois public utilities, is that
10 correct?

11 A. Correct.

12 Q. And the Exelon subsidiary of which ComEd is
13 a part is Exelon Energy Delivery Company?

14 A. Correct.

15 Q. And is that a Delaware corporation?

16 A. I don't know. I believe so but I don't
17 know. Maybe a Pennsylvania corporation. We are a
18 Pennsylvania corporation.

19 Q. Exelon --

20 A. Corp.

21 Q. Is a Pennsylvania corporation?

22 A. Pennsylvania corporation.

1 Q. If Exelon's proposed merger with Public
2 Service Electric and Gas occurs, are you expected to
3 be executive vice president for government and
4 environmental affairs and public policy of the
5 merged entity?

6 A. Yes, I am. That has been announced.

7 Q. Could you please review the document marked
8 AG Cross Exhibit 3? Does this organizational chart
9 accurately depict your expected role in Exelon
10 Electric and Gas?

11 A. Yes.

12 Q. And could you review AG Cross Exhibit 2?

13 A. Is that the post-merger one? This one
14 doesn't have a number.

15 Q. Yes.

16 A. Thank you, yes.

17 Q. And could you identify the box with which
18 you will be affiliated in the post-merger framework?

19 A. It is denoted here as EEG Services, Exelon
20 Electricity -- Electric and Gas Services Company.
21 It is a service company, just as I am currently
22 employed by Exelon Business Services Company.

1 Q. Thank you. Ms. Moler, in connection with
2 your employment at Exelon Corporation do you have a
3 compensation package that includes Exelon stock
4 options?

5 A. Yes, I do.

6 MS. HEDMAN: Would you please mark this as AG
7 Cross Exhibit 7?

8 (Whereupon AG Cross
9 Exhibit 7 was marked
10 for purposes of
11 identification as of
12 this date.)

13 MR. RIPPPIE: Ms. Hedman, if you are prepared to
14 represent to me that these are true and accurate
15 copies of SEC filings, I am prepared to stipulate
16 that they are SEC filings.

17 MS. HEDMAN: I would be willing to stipulate to
18 that. These are SEC filings that were downloaded
19 from the Exelon Corp. website.

20 MR. RIPPPIE: Fair enough.

21 JUDGE WALLACE: Are you moving that one?

22 MS. HEDMAN: Your Honor, I would move that AG

1 Cross Exhibit 7 be admitted into evidence.

2 MR. RIPPPIE: And presumably the purpose for
3 which it is being offered is some attempt at
4 impeachment by showing interest, is that the point?

5 MS. HEDMAN: It is simply being offered because
6 Ms. Moler is appearing in this proceeding as a
7 witness on behalf of Commonwealth Edison, and the
8 people have a right to know if Ms. Moler could
9 personally benefit as a result of the outcome of
10 this case which is ultimately a case that will
11 determine how much money Illinois ratepayers will be
12 required to pay for electricity purchased from
13 suppliers that might well include a subsidiary of
14 the company where Ms. Moler serves as executive vice
15 president.

16 MR. RIPPPIE: I really wasn't objecting. I was
17 asking what the purpose was and I think you have
18 said that that was the purpose. So I have no
19 objection.

20 JUDGE WALLACE: All right. AG Cross Exhibit 7
21 is admitted.

22 (Whereupon AG Cross

1 Exhibit 7 was admitted
2 into evidence.)

3 MS. HEDMAN: Your Honor, I believe you already
4 had this this morning.

5 JUDGE WALLACE: Okay.

6 BY MS. HEDMAN:

7 Q. Ms. Moler, I have given you two documents
8 which this morning were marked as Cross Exhibits 5
9 and 6.

10 A. Which is which?

11 Q. The two-sided document is Exhibit 5. The
12 single-sided document is Exhibit 6.

13 A. Thank you.

14 Q. Is Exhibit 5 a program for presentation on
15 September 21 that the Illinois Commission sponsored
16 in connection with the Post-2006 Initiative?

17 A. It doesn't have a date on it but I would
18 presume it is. Oh, I found it on the back. Yes.

19 Q. Did you attend this event?

20 A. No, ma'am, I did not.

21 Q. Would you please review the document which
22 I gave to you a few minutes ago that has been marked

1 as AG Cross Exhibit 6? Is this an invitation to a
2 Post-2006 Roundtable Speakers Dinner on September
3 20, 2004?

4 A. Yes, it is.

5 Q. And did you receive one of these
6 invitations?

7 A. I don't know if I received the invitation.
8 I attended the dinner. So presumably I did.

9 Q. Did any other ComEd or Exelon employees,
10 consultants or attorneys attend that dinner?

11 A. There was quite a large crowd. There were
12 other Exelon, ComEd people present.

13 Q. Can you specifically recall any individuals
14 who were there?

15 A. John Rowe, members of this Commission. I
16 believe Commissioner Ford was there and I know
17 Commissioner Wright was there and Commissioner
18 Hurley was there.

19 Q. And Commissioner O'Connell-Diaz?

20 A. I don't remember if Commissioner
21 O'Connell-Diaz was there. I believe she was, but I
22 am not positive about that.

1 Q. And do you recall whether Commissioner --
2 FERC Commissioner Pernell (sp) was present?

3 A. Yes, she was. Yes, I recall her. Yes, she
4 was.

5 Q. All right. And do you know whether ComEd
6 or Exelon provided any financial support for that
7 particular dinner, either directly or through the
8 Illinois Energy Association?

9 A. I have no idea. I would note that
10 government employees were expected to pay for their
11 own dinner.

12 Q. Do you know whether government employees
13 actually did pay for their dinner?

14 A. I presume they did, but I don't know that.

15 MS. HEDMAN: Thank you. I have no further
16 questions.

17 JUDGE WALLACE: Further cross of Ms. Moler?

18 MR. GIORDANO: Yeah, I just have one or two.

19 JUDGE WALLACE: Mr. Giordano.

20 CROSS EXAMINATION

21 BY MR. GIORDANO:

22 Q. Ms. Moler?

1 A. Mr. Giordano.

2 Q. I would like to refer you to page 6, line
3 121, of your testimony where you testify -- you are
4 testifying about PJM's active market monitoring
5 unit, correct?

6 A. Yes.

7 Q. Isn't it true that the PJM market
8 monitoring unit will not have a role in monitoring
9 ComEd's proposal auction?

10 A. No, that is not true. The PJM market
11 monitoring unit has authority to review all
12 transactions within PJM. The auction proposal is a
13 wholesale proposal where sellers in the auction, in
14 the market, would sell in the wholesale market, and
15 I would expecting Mr. Bauer, the PJM market
16 monitoring unit head of staff, to be actively
17 involved.

18 Q. Okay. I believe that's different than the
19 response to a data request but it certainly is
20 something that we would prefer. So you expect that
21 they will be actively involved in monitoring the --
22 can you elaborate a little more? Will they actually

1 be involved and be at the auction monitoring the
2 process?

3 A. No, I would not expect them to be at the
4 auction monitoring the process. They monitor
5 routinely. They have a large staff. They routinely
6 monitor, as my testimony indicates, generators bids
7 for certain markets. They look at the holding.
8 They look at pricing patterns. They look at prices
9 for ancillary services. They report routinely,
10 simultaneously to the PJM board and to the Federal
11 Energy Regulatory Commission. They do not monitor
12 at retail, but the auction in reality is a wholesale
13 transaction to serve retail load.

14 Q. I am still not following exactly how they
15 will be involved or how you expect them to be
16 involved. How will they -- there is a three-day
17 review process after the fact; this is my
18 understanding proposed by ComEd, correct? Now, do
19 you expect the PJM marketing monitoring unit to be
20 involved in that three-day review process of the
21 reasonableness of the power purchases in the
22 auction?

1 A. I do not expect them to be -- I expect them
2 to be involved in preparing for the auction and in
3 making sure that there is nothing untoward that they
4 are aware of going into the auction by way of
5 generators' bids into the PJM marketplace. I do not
6 expect them to be a part of the actual auction
7 itself. That's why you have someone who runs the
8 auction as well as an independent monitor of the
9 auction.

10 Q. But how will their looking at what's going
11 on before the auction have an impact on what
12 suppliers are actually bidding into this auction?

13 A. Their job is to make sure that entities
14 serving customers in the PJM market are living by
15 the PJM rules, that they are not bidding
16 inappropriately into the PJM market which is a
17 single across the scope of PJM both daily, hourly
18 and a minute by minute auction. They are just the
19 cops on the beat of the PJM market.

20 Q. They are and they have a lot of knowledge
21 about the pricing in PJM, don't they?

22 A. They are very professional.

1 Q. So would you endorse the PJM market monitor
2 actually being -- I know that ComEd has now endorsed
3 the concept of Staff being involved in the auction
4 itself. Since the PJM market monitoring unit has
5 such good information on pricing and behavior, would
6 you support their direct involvement in the auction?

7 A. I don't believe that that is a role that is
8 contemplated by the PJM rules for the MMU.

9 Q. Meaning that it wouldn't be allowed by
10 the --

11 A. They have plenty to do as it is. They are
12 not staffed to do individual auctions. They do not
13 currently participate in the New Jersey BJB auction,
14 nor do they participate in the Maryland RFP, and I
15 would not anticipate that they would do that.

16 Q. Are you familiar with Dr. Laffer's proposal
17 for descending clock pay as bid auction?

18 A. No, sir, I am not. I know what pay as bid
19 means but I am not familiar with his particular
20 proposal.

21 Q. Would it be your testimony that a pay as
22 bid approach would comply with the Edgar criteria?

1 A. It would have to be considerably more
2 elaborate than a simply pay as bid.

3 Q. But your primary -- you testify that on
4 page 9, lines 192 to 194, the best evidence that a
5 utility is paying a fair price to its affiliated
6 suppliers is evidence that the utility chose the
7 affiliate after comparing its offer to the offers of
8 competing suppliers and found it to be the lowest
9 cost offer, isn't that correct?

10 A. That is one of the Edgar criteria. There
11 are other Edgar criteria that are also relevant and
12 there is -- that would have to be followed, if you
13 will, met, if you will. You could do it as pay as
14 bid or you could do it on the structure that is
15 before this Commission.

16 Q. And could you also do it through an RFP,
17 correct? You said that in your testimony.

18 A. I say that in my testimony. I do not
19 believe an RFP process is nearly as transparent or
20 as open or as much of a slam dunk for meeting the
21 Edgar criteria as the kind of proposal that is
22 included in the Illinois auction proposal because it

1 is much more open.

2 Q. But it has been accepted by FERC as an
3 approach, hasn't it?

4 A. It was accepted by FERC before they did
5 their latest clarification of the Edgar criteria. I
6 don't know if it would be at the present time.

7 Q. And that was a pay as bid approach with the
8 RFP that was accepted by FERC, correct?

9 A. You could characterize it that way. It is
10 not ordinarily characterized that way.

11 MR. GIORDANO: I have nothing further. Thank
12 you, Your Honor.

13 JUDGE WALLACE: Any other questions of
14 Ms. Moler?

15 MR. ROSEN: I just have one question. I'll
16 just limit myself again, but.

17 CROSS EXAMINATION

18 BY MR. ROSEN:

19 Q. As far as you know the only provider of
20 electricity to residential customers that are
21 requiring electricity through an auction is New
22 Jersey?

1 MS. DALE: Excuse me, we can't hear the
2 attorney.

3 BY MR. ROSEN:

4 Q. As far as you know the only -- is that any
5 better?

6 MS. DALE: Yes, that's better.

7 BY MR. ROSEN:

8 Q. The only place that is utilizing a clock
9 auction is New Jersey, to your knowledge, isn't that
10 correct?

11 A. Yes. Other states have considered it but
12 the only one that is currently using one is New
13 Jersey, that is correct.

14 MR. ROSEN: Nothing further.

15 JUDGE WALLACE: Any other cross for Ms. Moler?
16 Eric or Mr. Robertson.

17 MR. ROBERTSON: Thank you.

18 CROSS EXAMINATION

19 BY MR. ROBERTSON:

20 Q. Ms. Moler, could you please turn to pages 9
21 and 10 of your direct testimony?

22 A. Yes, sir.

1 Q. And there you indicate that FERC would be
2 in your opinion be comfortable accepting a contract
3 between ComEd and an Exelon Generation affiliate
4 that resulted from the process ComEd is proposing,
5 is that correct?

6 A. As it says on line 206 and the top of page
7 10, I would say yes, I believe it would.

8 Q. Now, would you agree that the Commission --
9 by Commission I mean Illinois Commerce Commission --
10 approval and oversight of the process is one of the
11 reasons FERC would be comfortable with the process?

12 A. I believe that the Illinois Commerce
13 Commission's endorsement of an auction proposal
14 would be very important to FERC. I do not believe
15 it would be dispositive.

16 Q. And likewise if the Commission, this
17 Commission, the Illinois Commerce Commission, were
18 to forego approval of the auction and ComEd elected
19 to proceed with the auction process anyway, the
20 Commission's failure to approve would not be
21 dispositive either, is that correct?

22 A. Correct.

1 Q. Would a finding by the Commission, the
2 Illinois Commission, that the process proposed by
3 ComEd would provide customers with adequate supply
4 at the lowest available cost also give FERC comfort
5 in approving the ComEd proposal?

6 A. Yes, it would, and we hoped it achieves
7 such a finding.

8 Q. And likewise if the Illinois Commerce
9 Commission were to find that there were another
10 mechanism that would produce the lowest available
11 cost, FERC would be less comfortable with the ComEd
12 proposal, is that correct?

13 A. I am sorry, I got lost in the middle of the
14 sentence.

15 Q. In your opinion would FERC be less
16 comfortable with the ComEd proposal if the Illinois
17 Commerce Commission were to find that the proposal
18 would not necessarily be productive of the lowest
19 available cost?

20 A. As I said earlier, I believe that the view
21 of the Illinois Commerce Commission would be very
22 important to the Federal Energy Regulatory

1 Commission but not dispositive. I believe if we met
2 the Edgar criteria otherwise, then the Commission
3 would be likely to endorse such a proposal. The
4 converse has been true where state's have endorsed
5 other processes and FERC has rejected them in any
6 case because they have not met the Edgar criteria.

7 MR. ROBERTSON: Nothing further, Your Honor.

8 EXAMINATION

9 BY JUDGE WALLACE:

10 Q. Ms. Moler, very briefly, what is the Edgar?

11 A. Edgar is a case that was originally
12 enunciated in 1991. I remember it because I was a
13 member of the Federal Energy Regulatory Commission
14 at the time. It involved an affiliate transaction
15 involving Boston Edison Company. It said briefly
16 that the Commission would not approve affiliate
17 contracts unless parties present evidence of direct
18 competition between affiliated and non-affiliated
19 suppliers or other record evidence that supply
20 equivalent comfort to FERC.

21 Since that time 14 years ago, FERC has
22 elaborated on the Edgar case considerably. The

1 standards are becoming even more prescriptive. The
2 Commission has characterized itself as increasingly
3 concerned about affiliate transactions. Their
4 latest enunciation on the subject was about a year
5 ago last July after they held a technical
6 conference, and they said that Edgar is still good
7 law but then they elaborated a bit on some new bells
8 and whistles, if you would, that they would apply
9 that are a little more prescriptive as to the type
10 of process that one has to be engaged in, an open
11 process, under an auction monitor, manager, that
12 sort of thing, if one is going to enter into an
13 affiliate contract. I covered this in the workshop
14 presentation that I gave in this room about a year
15 ago.

16 Q. I don't think I was invited.

17 A. Sorry you missed it.

18 Q. What was the -- does the most recent case
19 have a name?

20 A. Yes, it is called Allegheny Decision. I
21 would be happy to get you the cite.

22 JUDGE WALLACE: Thank you. Any redirect?

1 MR. RIPPPIE: No, sir, there is none.

2 JUDGE WALLACE: All right. Thank you,

3 Ms. Moler. You may step down.

4 (Witness excused.)

5 JUDGE WALLACE: Let's take a five-minute break.

6 (Whereupon the hearing

7 was in a short recess.)

8 JUDGE WALLACE: Let's go back on the record.

9 MR. RIPPPIE: Your Honor, ComEd's next witness
10 is Ms. Arlene Juracek. She is in the witness box
11 and was sworn earlier today, so to speak.

12 JUDGE WALLACE: Please proceed. I guess we can
13 call it the dock.

14 MR. RIPPPIE: No, let's not.

15 ARLENE JURACEK
16 called as a Witness on behalf of Commonwealth Edison
17 Company, having been first duly sworn, was examined
18 and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. RIPPPIE:

21 Q. Good afternoon, Ms. Juracek, how are you
22 today?

1 A. I am fine.

2 Q. Have you prepared or caused to be prepared
3 under your direction and control prefiled rebuttal
4 testimony for submission to the Illinois Commerce
5 Commission in this docket?

6 A. Yes, I have.

7 Q. Is that testimony designated ComEd Exhibit
8 9.0 with attachments thereto designated 9.1 through
9 9.7?

10 A. Yes.

11 MR. RIPPIE: For the record, Your Honor, that
12 was filed on e-Docket and has the e-Docket serial
13 number of 60092 on July 6.

14 Q. Ms. Juracek, do you have any additions,
15 corrections or clarifications to make to that
16 testimony?

17 A. No, I don't.

18 Q. If I were to ask you the same questions
19 that appear in that testimony today, would you give
20 me the same answers?

21 A. Yes.

22 Q. Have you also prepared or had prepared

1 under your direction and control surrebuttal
2 testimony for submission to the Commission in this
3 docket?

4 A. Yes.

5 Q. And is that testimony designated ComEd
6 Exhibit 17.0 with attached 17 -- Exhibit 17.1
7 through 17.3?

8 A. Yes.

9 MR. RIPPPIE: For the record, Your Honor, that
10 was filed on August 19 with an e-Docket reference
11 number 61487.

12 Q. Ms. Juracek, are there any additions,
13 corrections or clarifications you wish to make to
14 Exhibit 17.0?

15 A. Yes, there are four.

16 Q. What is the first?

17 A. The first is at line 576 and this is simply
18 an error of spell check, I suspect. It reads, "The
19 migration analysis in lieu of the mitigation plan."
20 It should read "the migration analysis in light of
21 the mitigation plan." And again that was line 576.

22 Q. And the second?

1 A. The second is at page 33, line 742, and I
2 believe it was filed as an errata. It says, "The
3 senior secured debt rating." It should read, "The
4 lowest secured debt rating."

5 Q. And is the same change intended to be made
6 in the attached SFC which that paragraph quotes?

7 A. Yes, it is.

8 Q. And what is the next?

9 A. The next is a discussion in the paragraph
10 at lines 814 through 823 on page 36. And upon
11 rereading, it became apparent to me that it might
12 appear to be in conflict with Dr. LaCasse's
13 testimony at line 422 to 439 in her surrebuttal.
14 And I needed, I felt, to clarify for all of us here
15 that this is talking about supplier participation in
16 any final revisions to the SFC. And my testimony is
17 that I agree with Dr. LaCasse that to the extent
18 there are any housekeeping changes, that they be
19 allowed to be made. But I also agree with her that
20 those changes should not be of such significance
21 that they would somehow undermine or not be in
22 conformance with the Commission's order. So I was

1 meaning to simply reject any future changes that
2 might cause the Commission's order to be in peril.

3 Q. And what was the final?

4 A. The final change is --

5 JUDGE WALLACE: You are on page what, 36?

6 THE WITNESS: That was -- and the pagination
7 may be different, I suspect, depending on how you
8 print it out, but it's the paragraph at 814 to 823.
9 It says, "Providing for a formal period for still
10 additional supplier input..."

11 JUDGE WALLACE: Okay.

12 A. The fourth change is at lines, the
13 discussion under the Q and A that begins at line
14 905.

15 JUDGE WALLACE: Wait, I am sorry, go back.
16 What is your change?

17 THE WITNESS: My change is to -- there are no
18 specific wording changes but to simply clarify my
19 intent that my intent had been that housekeeping
20 changes would be allowable but that changes that--

21 JUDGE WALLACE: Okay, you are not changing
22 anything starting at the paragraph on line 814?

1 THE WITNESS: NO, I am not and I am
2 basically --

3 JUDGE WALLACE: Go on to the next change, then.

4 A. The next change, the final change, is the Q
5 and A at line 905 through 917. This is
6 Mr. Huddleston's concern about the starting time of
7 the contract, the supply contract, and at line 916
8 it says, "Electricity under the SFC must begin
9 flowing with the hour ending 0100 EPT." That should
10 be with the hour starting 0100 EPT on January 1,
11 2007. So basically power needs to flow at the hour
12 beginning at 2400 on December 31 which would be 0100
13 on eastern time. Those are the changes.

14 MR. RIPPPIE: Your Honor, if it is your
15 preference, we are happy to put the at least three
16 textural revisions in an errata, put it on e-Docket.
17 Alternatively, we can have copies with the line in
18 to the court reporter. Sorry we didn't have time to
19 file this on e-Docket prior to today.

20 JUDGE WALLACE: If you could change those and
21 file it on e-Docket, that would be good.

22 MR. RIPPPIE: I will do so.

1 Q. Ms. Juracek, with those four exceptions if
2 I were to ask you the questions that are presented
3 in ComEd Exhibit 17 today, would you give me the
4 same answers?

5 A. Yes, I will.

6 MR. RIPPPIE: Your Honor, I have no further
7 questions for this witness and I would offer in the
8 record, into evidence rather, ComEd Exhibits 9.0,
9 9.1, 9.2, 9.3 and, 9.4, 9.5 through 9.7 and Exhibits
10 17.0 through 17.3.

11 JUDGE WALLACE: All right. I am sorry, could
12 you go back through those? 9.0 and what others?

13 MR. RIPPPIE: 9.0 through 9.7 and 17.0 through
14 17.3.

15 JUDGE WALLACE: All right. What is 17.1?

16 MR. RIPPPIE: 17.1 is the red line -- no, I am
17 sorry, 17.1 is a collection of testimony and two
18 orders relating to the proceedings in which the
19 transfer of certain generating assets was approved
20 as, Your Honor, Ms. Juracek says in the body of her
21 testimony, that is being offered for a limited
22 purpose.

1 JUDGE WALLACE: All right. And then the 17.2
2 is a document putting competitive power markets to
3 the test?

4 MR. RIPPPIE: And that is a report, actually I
5 think it is a series of a couple reports, which is
6 also being offered for the purpose of responding to
7 Dr. Rose's characterizations of trends nationally.

8 JUDGE WALLACE: And then 17.3 is the CPPB
9 supplier forward contract with some changes in it?

10 MR. RIPPPIE: In red lined form, yes.

11 JUDGE WALLACE: All right. Any cross of
12 Ms. Juracek?

13 MS. SPICUZZA: Yes, Your Honor.

14 CROSS EXAMINATION

15 BY MS. SPICUZZA:

16 Q. Good afternoon, Ms. Juracek. My name is
17 Maria Spicuzza. I am an assistant state's attorney
18 with the Cook County State's Attorney's office. On
19 page 7 of your surrebuttal testimony, and I am
20 referring to lines 158 and 159, you claim that
21 opponents to the auction have not identified a plan
22 in this docket that would provide Illinois consumers

1 with the electricity that they need, is that
2 correct?

3 A. That is correct.

4 Q. It is ComEd's responsibility to provide the
5 power to Illinois residential and small business
6 customers, correct?

7 A. Yes.

8 Q. The scope of this docket is just a review
9 of the tariffs that are proposed by ComEd?

10 A. This is ComEd's proposal, that is correct.

11 Q. And is there any other power procurement
12 plan being reviewed in this docket?

13 A. ComEd's proposal is being reviewed. To the
14 extent other parties have problems with that
15 proposal, I think the burden of the evidence -- and
16 I am not a lawyer -- shifts to them to bring forth
17 their alternatives.

18 Q. But ComEd hasn't proposed any other power
19 procurement plans?

20 A. That's right.

21 Q. Also on page 7 of your surrebuttal you
22 indicate that ComEd owns no generation and after the

1 expiration of the mandatory transition period must
2 look to the wholesale market, is that right?

3 A. Yes.

4 Q. And Illinois law did not require ComEd to
5 transfer and/or sell its generation during the
6 mandatory transition period, is that correct?

7 A. Certainly.

8 MR. RIPPIE: Can I object to the form of the
9 question? And I will leave you this once and we can
10 have an understanding, if you are asking for
11 Ms. Juracek's understanding and we all agree that
12 she is not giving a legal opinion.

13 MS. SPICUZZA: Okay, yes.

14 A. 16-111D certainly facilitated the transfer
15 but it did not require it.

16 Q. And when ComEd transferred its generation,
17 it was aware that it had service obligations to
18 residential and small business customers in
19 Illinois, correct?

20 A. Yes.

21 Q. On page 8 of your surrebuttal testimony at
22 line 179 you state, "ComEd, which cannot manage such

1 risk as effectively and efficiently as the market."

2 Do you know how many economists and other experts
3 work for ComEd and Exelon?

4 A. Economists and other experts is a rather
5 broad question.

6 Q. How about economists?

7 A. I don't know.

8 Q. Are you really saying in that quote that
9 ComEd doesn't want the risk?

10 A. No, I am saying that ComEd does not now nor
11 has it ever had the resources or the organization to
12 manage the risk of procuring a full requirements
13 product.

14 Q. You don't know, though, whether there are
15 any economists on staff at ComEd?

16 A. I know that there are at least several. I
17 don't know the exact number. But there are
18 economists.

19 Q. And they don't have the skills to manage
20 the risks then?

21 A. It takes more than being an economist to
22 manage the skills. It takes sophisticated power

1 training skills and experience with the various
2 products and tools that are available in the
3 marketplace.

4 Q. And does ComEd have that expertise on
5 staff?

6 A. It has some familiarity with those tools
7 but it has no expertise.

8 Q. Turning to page 8 at lines 193 to 194 of
9 your surrebuttal, you state, "First off, no market
10 supplier of wholesale power and energy must or will
11 sell at below open market rates," is that correct?

12 A. Yes.

13 Q. Yet you would agree that since electricity
14 cannot be stored in any meaningful way, that
15 producers do want to sell their power, is that
16 right?

17 A. I am not sure what the storage aspect has
18 to do with the question but a generator who wants to
19 be in business generally needs a customer.

20 Q. And would you agree that there is no one
21 market for power in the United States?

22 A. I would agree with that statement. It is

1 rather broad.

2 Q. So what market are you referring to when
3 you say market rates?

4 A. I am stating generally that where there is
5 an open market where suppliers have many
6 opportunities to sell, they have absolutely no
7 reason or incentive to sell below what they could
8 have got. Essentially, marketers have opportunity
9 costs and they are very aware of what those
10 opportunity costs are.

11 Q. Different procurement methods may result in
12 different prices, is that right?

13 A. Yes.

14 Q. And when you say no market supplier would
15 sell at below open market rates, are you really
16 saying that Exelon can make more at an auction?

17 A. No.

18 Q. If there were no auction in Illinois would
19 Exelon still try and sell power to ComEd customers
20 at a reasonable price?

21 A. If there were no auctions, ComEd would
22 still need to procure power in some fashion.

1 Q. I am sorry, did I say ComEd? Would Exelon,
2 I am sorry, still try to sell power to ComEd at a
3 reasonable price?

4 MR. RIPPPIE: Let me object to the question,
5 please. The foundation for that question is -- what
6 is the basis of -- other than Ms. Juracek's
7 testimony about market behavior as a whole?

8 MS. SPICUZZA: In her surrebuttal testimony she
9 testifies that no market supplier of wholesale power
10 and energy must or will sell at below open market
11 rates. So I am --

12 MR. RIPPPIE: Just to be clear, I have no
13 objection to you questioning Ms. Juracek about the
14 behavior of sellers in general. I took your
15 question to imply that she had specific knowledge
16 about the intention of Exelon Generation, and there
17 is no foundation for that question.

18 MS. SPICUZZA: I am asking a hypothetical
19 question, Your Honor.

20 MR. RIPPPIE: With that understanding I have no
21 problem.

22 THE WITNESS: A. Okay, again, if there were

1 no auction and ComEd still retained an obligation to
2 serve customers, it would need to procure its needed
3 supply in some fashion. As to whether or not Exelon
4 Generation would be willing to sell that under
5 whatever hypothetical scheme in lieu of an auction
6 is proposed, I really can't answer.

7 BY MS. SPICUZZA:

8 Q. On page 11 of your surrebuttal testimony at
9 lines 249 to 250 you state, "The prudence, justness
10 and reasonableness of ComEd's proposal to secure the
11 power and energy its retail customers need are
12 central issues in this docket." Yet ComEd has not
13 provided a price of generation for the Commission to
14 review in this docket, is that true?

15 A. There is no specific numeric price. The
16 price that we are presenting is the price that would
17 result from the auction process.

18 Q. And has ComEd provided with these tariffs a
19 schedule showing all rates and other charges and
20 classifications as required under Section 9-102 of
21 the Act?

22 MR. RIPPKE: Object to the form of the

1 question. It contains a legal conclusion which I do
2 not happen to agree with, but that's not quite
3 relevant.

4 JUDGE WALLACE: Overruled. Go ahead and answer
5 the question.

6 A. ComEd has provided the tariffs it believes
7 are necessary in order to affect its procurement
8 proposal and that is the narrow scope of this docket
9 as I understand it.

10 Q. And do they show all the rates and other
11 charges?

12 A. Yes.

13 Q. And could you tell me where that is?

14 A. I think Rider CPP is like tons of pages
15 long and it is very long and it is all contained in
16 all those pages.

17 Q. Does it have a number?

18 A. What do you mean by a number?

19 Q. Are there actual prices shown in Rider CPP?

20 A. First of all, let me state that there are
21 many tariffs that are formula tariffs that contain
22 no numbers. Rider CPP has a process with an

1 algorithm that is designed to lead to a charge that
2 would --

3 JUDGE WALLACE: What's the answer to the
4 question, please?

5 A. There is no specific number nor do I
6 believe that one is required.

7 Q. How would a consumer read the tariff that
8 the Commission is reviewing and know what price they
9 would be paying for electricity?

10 A. Until the auction is run and the
11 translation process is run, there will be no price.

12 Q. How can the Commission analyze this filing
13 and compare the rates in the ComEd approach with the
14 other approaches to determine if it is just and
15 reasonable?

16 A. It would examine the process to determine
17 whether or not the results of the process were
18 deemed to be just and reasonable compared to
19 alternative processes that might be considered or
20 proposed by others.

21 Q. But it won't be able to compare the rates
22 prior to the auction taking place?

1 A. They simply aren't knowable.

2 Q. And are you really seeking in this docket
3 if it is approved the end of any review of
4 generation rates in Illinois?

5 A. No.

6 Q. Have you filed any contracts with your
7 proposal?

8 A. Yes.

9 Q. On pages 13 to 15 at line 306 of your
10 surrebuttal -- strike that.

11 MS. SPICUZZA: I have no further questions,
12 Your Honor.

13 JUDGE WALLACE: Anyone else have cross of
14 Ms. Juracek? Mr. Rosen.

15 CROSS EXAMINATION

16 BY MR. ROSEN:

17 Q. Good afternoon, Ms. Juracek. Have I
18 pronounced that right? Good afternoon, Ms. Juracek.
19 I am Larry Rosen. I am with the Citizens Utility
20 Board. How long have you worked for Commonwealth
21 Edison?

22 A. Thirty-two years.

1 Q. And are you also employed by one of the
2 Exelon companies as well?

3 A. My paycheck comes from the Exelon Business
4 Services Company and, as Ms. Moler has testified
5 earlier, that's because of PUHCA issues. I
6 supervise people both at PECO and at ComEd, so I
7 reside at BSN and allocate my time.

8 Q. Do you have a title with the Exelon
9 Services Company?

10 A. My title is Vice president Of Energy
11 Acquisition for Exelon Energy Delivery.

12 Q. Do you have stock options with Exelon
13 Corporation?

14 A. Yes.

15 Q. And what is your specific title with
16 Commonwealth Edison now?

17 A. I am Vice President of Energy Acquisition
18 at both ComEd and PECO.

19 Q. And what does that mean?

20 A. That means that I am in charge of the
21 department that at ComEd is basically the load
22 serving entity and handles all the daily operations

1 which PJM requires as a load serving entity. We
2 also get involved in PUHCA contracts, Qualified
3 Solid Waste Energy Facility contracts, things
4 related to the wholesale procurement of power. On
5 the PECO side we do that, plus we manage the Retail
6 Customer Choice Operations in Philadelphia.

7 Q. From 1997 through 2006 there has been a
8 rate freeze in effect for customers of Commonwealth
9 Edison, isn't that correct?

10 A. Yes, and a 20 percent reduction for
11 residential customers.

12 Q. And Exelon Generation is one of the
13 companies that has been supplying electricity to
14 Commonwealth Edison during this time period, isn't
15 that correct?

16 A. Specifically, it has been the only company
17 supplying us electricity since 2000.

18 Q. And at some point Commonwealth Edison knew
19 that that contract was going to end?

20 A. Yes.

21 Q. When did Commonwealth Edison first start
22 discussing ways of acquiring electricity from other

1 generators, including Exelon, knowing that that
2 contract to supply electricity would open at the
3 end?

4 A. I would think at some point in 2003 the
5 discussion began.

6 Q. So you agreed with the testimony of
7 Mr. Clark that procurement discussions began in
8 2003?

9 A. Yes.

10 Q. And that was prior to the initiation of the
11 Post-2006 committee, wasn't it?

12 A. Yes.

13 Q. And was there also discussion in 2003 about
14 an auction process being utilized to acquire
15 electricity?

16 A. Through November of 2003 our goal had been
17 to acquire Illinois power and in that process also
18 gain approval for a single source affiliate
19 contract. So that's where we were headed.

20 Q. All right. But my question is by the end
21 of 2003 was the auction process being discussed
22 within Commonwealth Edison about a means of

1 acquiring electricity from generators?

2 A. When it became clear, both through the
3 failure of the Illinois Power proposal as well as
4 observing what FERC was doing with respect to
5 strengthening the Edgar standards, we began to look
6 at competitive procurement methodologies, and the
7 auction proposal as we were observing it in New
8 Jersey was one of those.

9 Q. And that was in 2003?

10 A. Yes.

11 Q. And that was again prior to the Post-2006
12 committee being initiated, isn't that correct?

13 A. Right. And again I would emphasize, it was
14 one of several procurement methodologies that we
15 were looking at.

16 Q. What other procurement policies were you
17 looking at at the time?

18 A. We analyzed whether we should do a
19 horizontal procurement which would be active
20 portfolio management, vertical procurement, and RFP
21 versus declining clock auctioning. I think many of
22 the 12 scenarios that were discussed in the Post-'06

1 Initiative came to mind.

2 Q. At what point did Commonwealth Edison
3 conclude that it wanted to use an auction process to
4 procure electricity?

5 A. I think sometime in mid-2004.

6 Q. And so it went into these committee
7 meetings wanting to be a proponent of the auction
8 process, isn't that correct?

9 A. I think we had a predisposition to think it
10 was the right methodology, but we certainly
11 entertained a very robust -- and that's my word,
12 robust -- discussion of all the methodologies. We
13 wanted to make sure we covered the water front.

14 Q. But for all practical purposes you were --
15 ComEd was a primary proponent of the auction process
16 going into the committee meetings, isn't that
17 correct?

18 A. I don't know if I would say we were a
19 primary proponent, but certainly we found that
20 process to be attractive.

21 Q. Other than New Jersey, what other
22 jurisdictions or entities or whatever are conducting

1 a clock auction like the one being proposed here?

2 A. I think New Jersey is the only one doing it
3 for electricity. There has been experience --

4 Q. That answered my question, thank you.

5 A. In Canada.

6 Q. I am not talking about Canada; I am talking
7 Unite States.

8 A. As well as home.

9 Q. You got that in?

10 A. I am sure Dr. LaCasse will elaborate on
11 that.

12 Q. By the way, when was Dr. LaCasse hired?

13 A. I don't know.

14 Q. Was it prior to the formation of the 2006
15 committee?

16 A. I don't know.

17 Q. How about Hogan? Do you know when he was
18 hired?

19 A. Oh, gosh, we have been working with Dr.
20 Hogan for years so I can't articulate when this
21 particular engagement versus just our general
22 association with Dr. Hogan began.

1 Q. How long has Commonwealth Edison been
2 working with Dr. Hogan?

3 A. I don't know that for a fact. Mr. Naumann
4 can tell that you.

5 Q. And Dr. Hogan is part of a group, is he
6 not?

7 A. Uh-huh.

8 Q. And what is the name of that group?

9 A. LECG, I believe.

10 Q. How long has Commonwealth Edison used that
11 particular group as well?

12 A. I don't know.

13 Q. And as far as you know was Dr. Hogan
14 employed by that company during the entire time you
15 were using him?

16 A. I don't know.

17 Q. Now, obviously during your 32 years with
18 Commonwealth Edison you are familiar with what a
19 rate case is, isn't that correct?

20 A. Yes.

21 Q. All right. And typically in a rate case
22 you would come -- and I mean you being Commonwealth

1 Edison, not specifically you -- but typically ComEd
2 would come in in a rate case and justify among other
3 things the amount it has paid for electricity, isn't
4 that correct? I know it is a general statement but
5 that's typically done. In other words, you justify
6 what you pay before the ICC after you have already
7 paid that price?

8 A. It would depend on the nature of the case,
9 what revenue requirement you were seeking recovery
10 of. If in fact it included a commodity, then that
11 would be fair game.

12 Q. Well, if it included the acquisition of
13 electricity, would that be fair game?

14 A. The process or the price?

15 Q. Both, in a prudence review, in a rate case?

16 A. In a rate case or in a prudence review. We
17 are jumping all over the place here.

18 Q. How about a rate case? We will take that
19 first.

20 A. In a rate case where we were seeking the
21 recovery of just and reasonable costs, if in fact
22 the rates of concern covered the procurement of

1 electricity, then the just and reasonable costs of
2 that electricity would be part of that case.

3 Q. Are you familiar with Edgar, by the way?
4 That's been something that has been discussed here
5 earlier?

6 A. Yes.

7 Q. You are familiar with that case. Is it
8 true that that Edgar standard was primarily designed
9 to prevent an affiliate from charging more than
10 market rates to its other affiliated company?

11 A. Yes.

12 Q. When I mean more, I am talking about
13 charging more than market rates?

14 A. Yes.

15 Q. Now, under the proposal that is part of
16 this proceeding, is it correct to say that you are
17 asking the ICC to perform a prudence review of the
18 process that Commonwealth Edison intends to use at
19 the auction at the end of 2006?

20 A. Asking the Commission to approve a
21 requested process as being just and reasonable and
22 prudent.

1 Q. And if they approve it the way you have
2 proposed it, then the amount you pay for electricity
3 under the process would be passed through to the
4 consumer or to the customers of Commonwealth Edison?

5 A. Yes.

6 Q. And as far as you know, the way the process
7 works is that the auction manager has only one day
8 to submit to the ICC, the Illinois Commerce
9 Commission, what the results of the auction are?

10 A. That's my understanding.

11 Q. Is it also your understanding that the ICC
12 has only three business days after the auction
13 closes to either approve or disapprove of the prices
14 that resulted from the auction?

15 A. Yes.

16 Q. And that's the only prudence review after
17 the fact that you are asking the ICC to perform,
18 isn't that true?

19 A. I don't believe that's a prudence review.

20 Q. Well, what is it then? It is no prudence
21 review at all?

22 A. I believe it is a review to insure that the

1 processes were followed and that the auction manager
2 was comfortable that there were no fatal market
3 anomalies that occurred during the running of the
4 auction. It is basically to insure that the result
5 is fair, for want of a better word.

6 Q. And the auction manager, that's, as far as
7 the proposal is now, the auction manager is going to
8 be hired by Commonwealth Edison, isn't that correct?

9 A. Yes.

10 Q. And has there been some discussion that
11 LaCasse be hired as the auction manager?

12 A. I don't know.

13 Q. Who would know that?

14 A. Mr. McNeil.

15 Q. Is it your understanding that Ms. LaCasse
16 would be hired as the auction manager?

17 A. Since I am not involved in that contract, I
18 can't say.

19 Q. Okay. Now, what happens if the ICC doesn't
20 approve the auction process that is part of this
21 proceeding? What's Commonwealth Edison going to do
22 then?

1 A. Well, first of all, we would hope that it
2 would in the way that the evidence would lead us
3 there. If the ICC does not approve what we have, I
4 think we would have to read the Commission order and
5 read the totality of the testimony in the docket and
6 then go from there, depending on what caused that
7 disapproval or that lack of approval.

8 Q. Has there been any discussion at
9 Commonwealth Edison about what they are going to do
10 if the Illinois Commerce Commission doesn't approve
11 this process?

12 MR. RIPPPIE: Mr. Rosen, to the extent that you
13 are asking this witness to comment on what ComEd's
14 legal strategy is to respond to a hypothetical order
15 of this Commission, I object. It calls both for
16 speculation and potentially for invasion of
17 privileged conversations.

18 JUDGE WALLACE: Overruled. Go ahead and answer
19 the question.

20 THE WITNESS: In light of Mr. Rippie's
21 objection I lost track of the question. Could
22 you --

1

2

BY MR. ROSEN:

3

4

5

6

Q. Has there been any discussions that you know of at Commonwealth Edison about what Commonwealth Edison is going to do to acquire electricity if this auction process isn't approved?

7

A. No.

8

9

Q. So they are putting all their eggs in one basket, if that's a fair characterization?

10

11

12

A. Well, there is a worse case fall back which is that we passively buy the capacity and the energy from the PJM market.

13

14

JUDGE WALLACE: I am sorry. I didn't understand you.

15

16

17

18

A. That we would buy the capacity and energy and ancillary services like we have from the PJM market. As a load serving entity, we have the ability to do that.

19

BY MR. ROSEN:

20

21

22

Q. Under that scenario you acquire the electricity through the PJM market and this auction process isn't approved, then you would have to come

1 before the Illinois State Commerce Commission as
2 part of a rate case to recoup some of the expenses
3 or moneys you paid to acquire that electricity,
4 isn't that correct?

5 MR. RIPPPIE: I renew my objection that he is
6 asking very complicated questions about the ability
7 of the Commission to interact with purchases done in
8 a regulatory way by FERC. If you are asking this
9 witness's lay understanding of what she knows from
10 non-privileged conversations, that is fine. But
11 that is not what you are asking her.

12 JUDGE WALLACE: Well, with Mr. Rippie's
13 instructions go ahead and answer the question.

14 A. Well, as Mr. Clark indicated, we do intend
15 to file a rate case. And let me add that this
16 procurement case I don't consider to be a rate case.
17 This is a -- although there is a rider that outlines
18 a process and a methodology for flowing charges
19 through to customers, it is not a rate case in the
20 context of the usual large rate case that goes on.
21 We will be filing such a case relatively soon and I
22 believe that this procurement in that case basically

1 dovetail together. And so when you speculate about
2 a failure of a result in this case, I think you need
3 to think about what is the result going to be in
4 that case and what other alternatives come out. I
5 really can't speculate on what we would do, though,
6 if this case failed.

7 Q. You have no idea either way?

8 A. I don't know because again it depends very
9 explicitly on the reasons for why it failed.

10 MR. ROSEN: I have nothing further, Your Honor.

11 JUDGE WALLACE: Mr. Stahl?

12 MR. STAHL: Yes, thank you.

13 JUDGE WALLACE: Would you like to move up to
14 the table?

15 MR. STAHL: Sure.

16 JUDGE WALLACE: Would someone be gracious
17 enough to give him a spot?

18 MR. STAHL: Mr. Examiner, David Stahl on behalf
19 of Midwest Generation.

20 JUDGE WALLACE: Oh, we got promoted a couple
21 years ago.

22 MR. STAHL: Judge, Your Honor, it has been

1 awhile since I have been here. I have missed a lot.
2 I think we have reserved 15 minutes.

3 CROSS EXAMINATION

4 BY MR. STAHL:

5 Q. And I would like to turn, Ms. Juracek, to
6 the current version of the supplier forward contract
7 which if I understand correctly is attached to your
8 surrebuttal testimony in a red lined version. Is it
9 Exhibit 17.3?

10 A. Yes.

11 Q. And as a preliminary question I know
12 Mr. McNeil sponsored an earlier version of this
13 contract and you have sponsored two versions
14 subsequent to that. Are you the person most
15 knowledgeable about this contract and speaking on
16 the company's behalf with respect to it at this
17 point?

18 A. Yes.

19 Q. Could you turn to page 52 of the exhibit?
20 This is Article 9 Billing and Payment. And there
21 are really two sections I would like to ask you
22 about, Section 9.2 and then 9.3. And let me first

1 state my understanding for you of how these two
2 provisions work, and then you can tell me if I am
3 wrong, okay?

4 A. Okay.

5 Q. 9.2iv on page 52 provides that if the
6 statement shows a net amount owed by the company to
7 the supplier, the company shall pay such amount
8 unless disputed and then it talks about timing.
9 First of all, the company itself will be preparing
10 this statement, will it not?

11 A. Yes.

12 Q. And does this say that once the statement
13 is issued, the company shall pay the amount on the
14 statement unless the company disputes the statement?

15 A. Little roman numeral four just says unless
16 disputed. It doesn't say by whom. So I think it
17 would allow for either party to dispute the
18 statement.

19 Q. And in the event either party disputes the
20 statement, the company will not make the payment, is
21 that correct? In other words, if there is a
22 dispute, the company may withhold the amount of the

1 payment?

2 A. Yes, although I believe that I recall
3 further sections here that say only the disputed
4 amounts should be withheld.

5 Q. Correct. And I believe that's 9.3 where it
6 says the disputing party shall pay only the
7 undisputed portion of the statement. That would
8 lead you to believe, would it not, that if the
9 company who has prepared this statement then
10 disputes the statement, it is entitled to withhold
11 from the supplier the amount of the disputed
12 statement?

13 A. If that odd circumstance were to occur,
14 that is correct. I think this allows for both
15 parties to behave in such a way because there are
16 payments that go both ways.

17 Q. But it is also your understanding, is it
18 not, that it is the company that is going to be
19 making the vast bulk of payments under this
20 agreement; the money is going to be falling from the
21 company to the supplier if everything works the way
22 it should, isn't that correct?

1 A. Assuming that the supplier makes its
2 appropriate PJM payment, for example, yes.

3 Q. Right. Do you have any estimate of the
4 relative magnitude of payments flowing from the
5 company to the supplier as opposed to the supplier
6 to the company under this agreement?

7 A. I would suspect the bulk of the payments
8 would be from the company to the supplier.

9 Q. Right. Allowing the company to withhold
10 disputed amounts pursuant to a statement that it has
11 itself prepared, can you explain to me what the
12 business reason is for that?

13 A. Again, because this is two way, it would
14 allow either party to withhold a payment that it
15 disputed. So while the company will be preparing
16 the statement for the energy, there may in fact be
17 payments going the other way that are disputed.

18 Q. But according to your understanding that
19 the bulk of the payments will be flowing from the
20 company to the supplier, this is a provision that
21 will have a grossly disproportionate benefit to the
22 company as opposed to the supplier, wouldn't you

1 agree with that?

2 A. Assuming that the company does not
3 capriciously dispute statements, I don't know why
4 this would be overwhelmingly in favor of either
5 party.

6 Q. Do you recall any discussion at the company
7 about the need or the desirability for this set of
8 provisions that we have just been discussing?

9 A. I think over the course of the last several
10 months since about December when we have been
11 engaged with suppliers and other parties on the
12 language in this supply forward contract, there has
13 been a lot of discussion about all the sections of
14 the contract, including the dispute provisions.

15 Q. Do you recall any particular discussion
16 about the need for or the business justification for
17 this provision or this set of provisions we have
18 been discussing?

19 A. Basically, my understanding is that this
20 follows standard commercial practice that the
21 disputing party may withhold disputed payments.

22 Q. Do you recall attaching to your rebuttal

1 testimony a response that you filed to various
2 suppliers who commented on a number of contractual
3 provisions early on in the collaborative process
4 that led to the SFCs?

5 A. Yes.

6 Q. I think that's Exhibit 9.1?

7 A. I think it is 9.2.

8 Q. Well, there is actually two of them. There
9 is a 9.1 and a 9.2. I am looking at 9.1 now. Now,
10 do you recall that early on in this process Midwest
11 Generation objected to these provisions that we are
12 talking about now?

13 A. As these exhibits indicate, there were
14 many, many provisions that we discussed and, quite
15 frankly, Mr. Stahl, I don't remember this one
16 specifically. So you will have to point me to some
17 specific language here.

18 Q. Sure. Take a look please at page 9 of
19 Exhibit ComEd 9.1, the bottom of the page,
20 withholding of disputed payments.

21 A. Yes.

22 Q. And you see the issue framed "Midwest

1 Generation argues that the provision of Articles 9
2 and 11 regarding payment disputes are highly
3 unfavorable to the supplier," that's the issue we
4 are discussing now, is it not?

5 A. Yes, uh-huh.

6 Q. And you see the company's response which
7 is, quote, the provisions to which Midwest
8 Generation objects are essentially the same as those
9 contained in the New Jersey agreement. There is no
10 evidence that those provisions have proven
11 unworkable. Do you recall what evidence the company
12 had as of the time of Exhibit 9.1 that these
13 provisions were either workable or unworkable?

14 A. Physically there was a lack of evidence
15 concerning these provisions that there was any issue
16 surrounding them.

17 Q. Do you recall that instead of -- well, do
18 you recall now that the 9.3 allows the party
19 disputing the statement to have 90 days before it
20 has to substantiate that dispute? And I think you
21 will see that, Ms. Juracek, on page 54 of this
22 Exhibit 17.3. It says, "The disputing party shall

1 present the dispute in writing and submit supporting
2 documentation to the non-disputing party within 90
3 days."

4 A. Yes.

5 Q. So, in other words, if the company disputes
6 its own statement, it can give itself another 90
7 days before it has to justify that to the supplier,
8 is that your understanding?

9 A. Yes, although, for example, I might give
10 you an example that might be applicable directly to
11 your client. This statement is going to depend on
12 meter to mount for electricity in our zone and we do
13 what we call a zonal checkout which means every
14 single day we check the meters on all the generators
15 and we do the tie line checkouts and in house flows.
16 Let's hypothetically say there is a issue with a
17 meter on a Midwest Generation plant and perhaps the
18 amount is in dispute. Because of some issue with
19 regard to access to the meter or something like that
20 that -- I am not alleging that that would happen but
21 I am coming up with a hypothetical in which although
22 ComEd prepares the bill off of meter to mount, in

1 fact, the supplier, in this case a physical supplier
2 that has generation, might have contributed to the
3 reason for that dispute.

4 Q. All right. And it is also correct, isn't
5 it, that under these provisions that if in fact the
6 company turns out to be wrong and has disputed the
7 statement improperly, all that happens is that the
8 supplier gets its money with interest at what's
9 referred to as the federal fund effective rate?

10 A. I believe that's correct, yes.

11 Q. Do you know what the federal fund effective
12 rate has been on the average over the last three
13 months?

14 A. No.

15 Q. That's published on the Federal Reserve
16 website, is it not?

17 A. I would assume so.

18 Q. Do you know if it's averaged less than two
19 percent over the last six months?

20 A. I will take your word for it. I don't
21 know.

22 Q. If in fact the only sanction on the company

1 for wrongfully withholding payments is that it pays
2 the amount that it owed plus interest at less than
3 two percent, what kind of deterrent is there against
4 the company from acting, I think you used the word,
5 capriciously before in withholding payments?

6 A. There is a huge process incentive here. If
7 we start willy nilly disputing payments and really
8 messing up our cash flows and our accounting, it
9 does none of us any good. Ideally this would work
10 smooth as silk. We would get our meter readings, we
11 would issue the bills, the money would transfer back
12 and forth. We have absolutely no reason to now
13 create an issue that is going to distract the
14 resources of the energy acquisition department that
15 is going to be in charge of making sure these
16 billings happen correctly.

17 Q. You could, could you not, by withholding
18 payments from a supplier wreak havoc on that
19 supplier's financial condition and make it
20 impossible for the supplier to perform under the
21 contract, if you wanted to?

22 A. That's a fairly strong hypothetical. Let

1 me stress it is a hypothetical and ComEd has no
2 interest in doing what you are proposing. But
3 certainly a capricious exercise of this clause is
4 something that we would not be interested in
5 exercising.

6 Q. Just one final question, Ms. Juracek.
7 There is another provision. I would just like to
8 ask you about any discussions you may have of the
9 indemnification provision in 14.1 on page 58 of this
10 same Exhibit 17.3. And again let me state my
11 understanding of how this works and if you disagree,
12 let me know. But as I understand this
13 indemnification provision, if the company -- strike
14 that. If the supplier contributes or causes a
15 circumstance that leads to a loss that a third party
16 intends to hold the company liable for, then the
17 supplier has to indemnify the company unless the
18 company has been grossly negligent or has engaged in
19 willful misconduct, is that correct? Is that your
20 understanding?

21 A. Right, it is clarified that except to the
22 extent that a court of competent jurisdiction

1 determines that the losses, penalties, expenses or
2 damages were caused wholly or in part by the gross
3 negligence or willful misconduct of the company.

4 Q. And the losses covered under this provision
5 include the statutory, I will refer to them as
6 penalties for lack of a better word, under 16-125 of
7 the Public Utilities Act, is that correct?

8 A. Yes.

9 Q. So unless the company has been shown by a
10 court to be grossly negligent or have engaged in
11 willful misconduct, the company will pass its 16-125
12 liability to a supplier if the supplier was a cause
13 of that loss, is that your understanding?

14 A. I think that language in the agreement is
15 that were caused by or occurs as a result of an
16 accident or omission by a supplier.

17 Q. That's not solely as a result of an act or
18 omission by a supplier, is it? That could be simply
19 a contributing cause, correct?

20 A. I am going to have to defer to legal
21 counsel on the specific meaning of those words
22 because I am familiar enough with liability causes

1 to know that words have specific terms.

2 Q. And that's fine and I am not interested in
3 a legal interpretation. But let me do ask you a
4 question. Do you recall any discussions within the
5 company about the business justification for this
6 provision in general?

7 A. I believe, Mr. Stahl, that either you or
8 one of the Midwest Gen attendees at one of our
9 workshops raised this issue, and in response to that
10 issue we did discuss it and our conclusion was as
11 you see in the contract.

12 Q. Right. But aside from whatever colloquy we
13 may have had at that workshop, do you recall any
14 internal business discussions at ComEd? I am not
15 asking for legal advice that your attorneys gave you
16 but any discussions about the business
17 justifications for this Section 14.1?

18 A. I think the business justification are as I
19 stated. If you are the cause of the outage, then
20 you bear the liability, and we left it at that.

21 Q. That's the rule; if you are the cause, you
22 bear the liability?

1 A. Yes.

2 MR. STAHL: Thank you. I have nothing further.

3 MS. SATTER: I have some questions.

4 JUDGE WALLACE: Ms. Satter.

5 CROSS EXAMINATION

6 BY MS. SATTER:

7 Q. Good afternoon, Ms. Juracek.

8 A. Good afternoon.

9 Q. I am going to start with your rebuttal
10 testimony which I believe is ComEd Exhibit 9.0. On
11 page 2 of your testimony you claim support from a
12 list of interests, including state governmental
13 bodies. You say that some of this support is shown
14 by testimony or parties, quote, otherwise
15 commenting.

16 A. Would you point me to a specific line?

17 Q. Page 2, lines 35 and 38. Now, when you
18 refer to parties otherwise commenting, you mean
19 parties whose comments are not part of this record
20 in this case, is that correct?

21 A. Basically, I am aware that there were
22 letters of support filed with the Commission and so

1 they were not in the nature of specific testimony
2 but supportive comments that were made at the time
3 we made our filing.

4 Q. So those parties who were not subject to
5 cross examination are the parties you are referring
6 to?

7 A. I am referring to any party who filed
8 supportive comments.

9 Q. Okay. And to the extent that they are not
10 written testimony, you still think that the
11 Commission should rely on them in its determination
12 of this case?

13 A. Certainly, they are part of the landscape
14 in which this docket is being conducted, and I think
15 they should be considered, yes.

16 Q. On page 4 of your testimony, I believe it
17 is line 68, you refer to more than \$3 billion that
18 Illinois consumers have saved as a result of
19 electric restructuring. My question to you is, are
20 you referring to the statutory rate reduction that
21 was put into place by the 1997 law?

22 A. I believe this covers the statutory rate

1 reduction, the mitigation factor and the CTCs,
2 generally all the sources of savings for consumers
3 as a result of the legislation.

4 Q. Now, would you agree with me that ComEd has
5 received billions of dollars in transition and
6 stranded cost recovery during the period after the
7 1997 Act was passed?

8 A. I don't know what the total dollar amount
9 is but, yes, we have received stranded cost
10 recovery.

11 Q. Do you know the order of magnitude?

12 A. It is relatively large. I am simply
13 unaware of what that number is at this point in
14 time.

15 Q. Now, your responsibilities currently at
16 ComEd include being in charge of energy acquisition,
17 is that correct?

18 A. Yes.

19 Q. And as part of your responsibility for
20 energy acquisition do you oversee the contracts of
21 Exelon Generation and other generators?

22 A. Yes.

1 Q. And those other generators could include
2 qualifying site facilities, wind generators,
3 cogeneration facilities?

4 A. Yes.

5 Q. But you also oversee the contract with
6 Exelon Generation?

7 A. Yes.

8 Q. And in your testimony you address several
9 modifications to the supplier forward contracts
10 referred to as SFC, correct?

11 A. Yes.

12 Q. And did you draw on your years of
13 experience at Commonwealth Edison to evaluate the
14 parties' proposal and make judgment about what
15 contract terms would be appropriate?

16 A. Among other things, yes.

17 Q. And would you agree that you cannot
18 evaluate the contract terms without your operation
19 and generation plant experience?

20 A. I would say, first of all, I have no
21 operation plant experience. I participated in
22 building a nuclear plant but never operating one.

1 The answer is, no, one need not have plant operation
2 experience to evaluate these contracts. These are
3 not plant specific contracts.

4 Q. Okay. Would you agree that your knowledge
5 of the terms and conditions necessary to procure
6 energy that you have developed over the last few
7 years since the 1997 Act have assisted you?

8 A. Yes.

9 Q. Now, you also address various modifications
10 to the auction rules in your testimony, is that
11 right?

12 A. Yes.

13 Q. And you agree with the Staff recommendation
14 that Commonwealth Edison should report the reason
15 for a breach and termination of SFC to Staff?

16 A. Could you point me to my testimony?

17 Q. I believe that's on page 16. Right, that's
18 under 13, although this is the summary.

19 A. Yes.

20 Q. Now, assuming a breach of an SFC, is it
21 true that Commonwealth Edison would be responsible
22 for obtaining replacement to supply?

1 A. Yes.

2 Q. And would Commonwealth Edison obtain
3 replacement supply in the most reasonable manner
4 that it could?

5 A. I believe Mr. McNeil lays out some criteria
6 as to how we would obtain that supply, depending on
7 how much life is remaining in the contract or how
8 close to the running of the auction that this breach
9 actually occurred. So under the parameters of
10 Mr. McNeil's criteria, we would behave reasonably.

11 Q. Would Commonwealth Edison attempt to
12 minimize the costs to consumers in obtaining
13 replacement supply?

14 A. Again, subject to the criteria, if we were
15 a matter of days away, for example, from the end of
16 a contract and it was most expeditious to actually
17 go to the real time market rather than seek some
18 minimizing strategy for three days, we would have to
19 consider all the facts of the case.

20 Q. And would some of those facts include time
21 of year?

22 A. I think the facts would more appropriately

1 cover how much remaining time in the contract was
2 involved and what type of a replacement procurement
3 process could be run reasonable to obtain the
4 replacement power.

5 Q. And you would take these actions to
6 minimize costs to consumers, despite the fact that
7 Commonwealth Edison receives no benefit from lower
8 prices, is that correct?

9 A. Certainly, we value our consumers and are
10 concerned about impacts on their bills so we would
11 seek to behave in a way that best mitigated any
12 adverse impacts.

13 Q. And you would do that regardless of the
14 fact that Commonwealth Edison's parent and
15 affiliate, Exelon Generation, might stand to benefit
16 from such a purchase?

17 A. I guess I don't understand the nature of
18 the question.

19 Q. Would you seek to minimize the cost to
20 consumers of Commonwealth Edison despite the fact
21 that as a seller Exelon Generation might want to
22 maximize his prices?

1 A. I think any seller would want to do the
2 best it could in a procurement, but again depending
3 upon the nature of the procurement there are many
4 options that are available to us. We might split
5 the tranches among all the winning bidders. We
6 might need to go to the real time market. We might
7 need to run an auction all over again. And
8 Mr. McNeil lays out those criteria. So he in
9 particular, given the development of the Edgar, is
10 that whatever we do be nondiscriminatory and that it
11 not favor an affiliate, for example.

12 Q. Now, would you make the same efforts to
13 obtain fair and reasonable supply terms whether the
14 breach was due to a Commonwealth Edison wrongful act
15 or the wrongful act of a supplier?

16 A. I think as far as my daily operations are
17 concerned, I would want to make sure that we had
18 supplies appropriately procured and I would leave
19 the default finding to someone else.

20 Q. Do you believe that the company would make
21 the same efforts regardless of where the fault was
22 ultimately determined by somebody else?

1 A. Yes.

2 Q. Can you describe how or whether your
3 responsibilities as vice president of Exelon Energy
4 Delivery are different from your responsibilities at
5 Commonwealth Edison?

6 A. Basically, I have a responsibility at the
7 Exelon Energy Delivery level because I have both
8 PECO and ComEd responsibilities. And among the
9 things that I try to do are to adapt best practices
10 from both Philadelphia and Chicago and insure some
11 uniformity of operation across Exelon Energy
12 Delivery. So it is very operationally focused and
13 it is geared toward learning from both Philadelphia
14 that has been in PJM from day one and ComEd that may
15 have been in existence since May of 2004.

16 Q. Still in your rebuttal testimony, on page
17 52 you say prices can neither be too high nor too
18 low. So my question to you is, is it your position
19 that market prices cannot be questioned as too high
20 or too low because they are set by market?

21 A. Right. Given that the process we are
22 proposing we believe draws from the liquidity and

1 depth of the market and we are fortunate to be in
2 the PJM market place which supports that liquidity
3 and depth, the market is the market, and I think we
4 have heard that several times today.

5 Q. Is it your position that there are no
6 non-market standards by which to judge whether a
7 market price is too high or too low?

8 A. I think you heard Mr. Clark indicate
9 earlier that we are very concerned about bill
10 impacts and he has suggested that we will continue
11 to look at ways to mitigate those impacts. We have
12 already testified that we find Mr. Lazare's approach
13 at mitigating interclass allocation impacts and
14 Mr. Clark indicated we will continue to work to see
15 if an overall mitigation proposal can be workable.

16 Q. So then a bill impact would be one
17 consideration to assess whether or not a price is
18 too high or too low, a price that comes out of a
19 market, is that correct?

20 A. No. Let me distinguish between running the
21 auction and passing judgment on a resulting price in
22 the auction. Bill impacts there have no place in

1 judging the quality of that price. That is process
2 oriented and should look at the depth and liquidity
3 of the markets and the behavior of the market
4 participants. What we are concerned about is more
5 from the rate design impact, the bill impact,
6 recognizing that we are coming off of a nine-year
7 transition.

8 Q. Is it your position that it is
9 inappropriate to look at cost data in determining
10 whether a price is too high or too low?

11 A. We will be looking at cost data. Our costs
12 will be the prices obtained from suppliers in the
13 marketplace.

14 Q. What about looking at the cost to
15 suppliers?

16 A. We have no business looking at those costs,
17 any more than we have looking at the costs of a
18 supplier of transformers. Basically, we look at the
19 price for the product that is bid to us.

20 Q. So in determining -- in accepting a price
21 of any product, is it true that Commonwealth Edison
22 would not try to discern the costs that go into that

1 price?

2 A. Remember what we are asking for here is a
3 full requirement load following product. It is a
4 very complex product which can be assembled through
5 an infinite variety of portfolios. If you are
6 suggesting that we then go and analyze the
7 portfolios that each of the bidders is submitting, I
8 would suggest that it is simply not our role and
9 that is the role of the auction manager to insure
10 that the process is run correctly.

11 Q. So do I understand your answer to be that
12 Commonwealth Edison would not look at the underlying
13 costs that go into a supplier's price?

14 A. That is correct.

15 Q. Would Commonwealth Edison consider relevant
16 the profit levels of the suppliers who are
17 participating in the auction?

18 A. I think the PJM market monitor might
19 consider those relevant and others who are observing
20 behavior in the marketplace. But ComEd is not
21 equipped to judge auction outcomes on some
22 subjective measure of whether or not we think

1 someone too profitable.

2 Q. But you do think that a market monitor or
3 an entity that is monitoring an auction might
4 consider that factor?

5 A. I think that's one of the jobs of the
6 market monitor, is to look to see if market power is
7 being exercised.

8 Q. And that's one way to determine market
9 power, is to look at profit logs?

10 A. I am not the expert there and I would
11 suggest Dr. Hieronymus or Dr. Hogan could deal with
12 that.

13 Q. And would you agree with me that it is also
14 possible to look at possible market distortion such
15 as those that occurred in California in assessing
16 whether a market price is a fair price?

17 A. Lots of things happened in California, so I
18 am not sure what you are referring to. But I think
19 certainly the auction manager, the market monitors,
20 have access to information concerning what's going
21 on in the marketplace.

22 Q. I would like you to turn to your rebuttal?

1 A. Surrebuttal?

2 Q. Surrebuttal, excuse me.on page 3, starting
3 on line 61, you say the auction results in purchases
4 from the lowest cost vendor. My question to you is
5 shouldn't you qualify that statement by saying the
6 lowest cost vendor for the product offered, that is
7 for the full requirements load following contracts
8 available on the day of the accident for the time
9 period of the contract?

10 A. Yes.

11 Q. On page 4, lines 85 and 86, you refer to,
12 quote, unjust and unfair review of the outcome of
13 the procurement decisions after the fact. Is it
14 your notion that an after-the-fact review is always
15 unfair and unjust?

16 A. After-the-fact review can be constructed in
17 a very productive way and in fact that's what we are
18 proposing, is that we gather together and assess how
19 to improve the next process. But assuming that
20 everything happened according to a process that was
21 already approved and that there were no market
22 aberrations observed, it was a reasonable result,

1 then there is no reason to go and take a second look
2 at the results.

3 Q. So would you consider a second look unfair
4 and unjust under those circumstances?

5 A. Yes.

6 Q. Do you agree with me that the Commission
7 has historically done an after-the-fact review of
8 power purchase costs, fuel costs, under the Uniform
9 Fuel Adjustment Clauses?

10 A. If you are limiting your question to the
11 fuel clause, yes, I agree to the fuel clause.
12 However, there have been other purchase agreements
13 where there has been no Staff review.

14 Q. And you are also aware that the Commission
15 reviews gas purchase adjustment clause charges on an
16 -- well, on an after-the-fact basis?

17 A. Right, but I would point out that we are
18 not requesting either of those in this case.

19 Q. Now, on page 8 you suggest that CUB/Cook
20 County witness Dr. Steinhurst and AG witness Reny
21 testified that they could obtain electricity at
22 below open market prices. Can you tell me what you

1 mean by open market prices?

2 A. Basically, there is either an implicit or
3 explicit inference in intervenor testimony that
4 somehow ComEd can beat the market, that we can get a
5 better deal by managing the portfolio ourselves
6 instead of having 28 portfolio managers compete head
7 on to provide us a low price product. Given what I
8 know about the markets and the opportunity costs of
9 these bidders, I have no clue why anyone would think
10 that we would do any better.

11 Q. Is it your position that Commonwealth
12 Edison personnel lack sufficient knowledge of the
13 wholesale market?

14 A. It is not that we lack knowledge of the
15 market. However, we do not today, nor have we ever,
16 procured from the market in a competitive fashion a
17 full requirements product. And so we simply
18 don't -- are not set up to perform that function.
19 We would have to create that function in the
20 company.

21 Q. But you do procure electricity in other
22 forms, in other words, forms other than full

1 requirements contracts?

2 A. Right. As you indicated, we have the PURPA
3 contract. We have the Qualified Solid Waste Energy
4 contract, and we have our full requirements PPA with
5 Exelon.

6 Q. And before the 1997 Act you had other
7 purchased power contracts as well, isn't that
8 correct?

9 A. Let me make it very clear, before the 1997
10 Act we did not need to create a full requirements
11 market-based portfolio. It was a different world in
12 which we owned physical assets and then we basically
13 just traded around the edges.

14 Q. So in trading around the edges you
15 purchased from the wholesale market as it existed at
16 that time?

17 A. Yes, or we sold to that market.

18 Q. Or you sold to that market. So you did
19 participate in the market at that point in time?

20 A. Yes.

21 Q. Prior to 1997.

22 A. Yes, but it was a very different market

1 than we have today.

2 Q. Is it also your position that Commonwealth
3 Edison personnel lack knowledge of the operation and
4 cost of electric generation to participate in the
5 market?

6 A. I think anyone can get on the PJM website
7 and look at the prices, so there is certainly no
8 lack of knowledge of pricing in the marketplace.

9 JUDGE WALLACE: Okay, would you please answer
10 the question?

11 A. The PJM nonal prices are the visible prices
12 at the generation nodes. So we will be able to get
13 the price that the market is dictating at those
14 various nodes.

15 JUDGE WALLACE: Would you please read the
16 question back?

17 (Whereupon the
18 requested portion was
19 then read back by the
20 Reporter.)

21 JUDGE WALLACE: Try that one.

22 A. The PJM generator nodes tell us hourly what

1 the generator --

2 JUDGE WALLACE: No, answer the question,
3 Ms. Juracek, please. It was fairly straight
4 forward.

5 THE WITNESS: And I think my answer is fairly
6 straight forward. We have access to generation
7 nodes pricing information.

8 JUDGE WALLACE: That is stricken. Answer the
9 question, please. Do you need it read back, again?

10 THE WITNESS: Please. I am not trying to be
11 difficult here. I am just trying to give you an
12 answer so, question.

13 MS. SATTER: Would you like me to restate the
14 question?

15 JUDGE WALLACE: No. Would you read it back
16 again please, Carla?

17 (Whereupon the
18 requested portion was
19 then read back by the
20 Reporter.)

21 A. No.

22 BY MS. SATTER:

1 Q. Thank you. Is it your position that
2 Commonwealth Edison personnel lack the knowledge of
3 the generation resources available to serve
4 customers in its service area?

5 A. I believe we at this point in time lack the
6 knowledge needed to transact business with
7 generators in the way we would envision the auction
8 suppliers to transact that business. So while we
9 have a general level of knowledge, we don't have the
10 specific knowledge.

11 Q. So you would agree with me then that
12 Commonwealth Edison personnel have knowledge of the
13 generation resources available to serve its
14 customers?

15 A. Only in a very general sense. We have not
16 solicited bids or information from specific
17 generators, other than what we are doing in the
18 sustainable energy initiative with respect to wind
19 generation.

20 Q. Beginning on page 16 of your surrebuttal
21 you discuss the testimony of AG witness David
22 Effron. I have some questions to you about that.

1 A. Okay.

2 Q. Do you agree with Mr. Effron that the
3 average price paid by Commonwealth Edison to Exelon
4 for electricity in 2004 is \$31.51 cents per megawatt
5 hour?

6 A. I looked at Mr. Effron's calculations and
7 they seemed to be a reasonable approximations.

8 Q. So you did not find any error in that
9 calculation?

10 A. I did not double-check his numbers as to
11 their sources but on the face of the exhibits, they
12 appear to be okay.

13 Q. And then you would also agree that
14 Commonwealth Edison purchased 75,091,873 megawatts
15 from Exelon Generation in 2004 which is the number
16 cited on his exhibit?

17 A. I believe that's megawatt hours.

18 Q. Yes, I am sorry, you are right.

19 A. But again that number looked reasonable.

20 Q. And do you also agree that if the actual
21 price of \$31.51 per megawatt hour were to increase
22 to \$45 per megawatt hour and that increase were

1 passed along to ratepayers, that the additional cost
2 to ratepayers would be approximately \$1 billion?

3 A. No.

4 Q. And did you find an error in Mr. Effron's
5 calculation that explains why you don't agree?

6 A. It is an error of logic, not an error of
7 calculation.

8 Q. So if you followed his calculation and
9 increased the price, the increased cost would be as
10 he determined, accepting his logic?

11 A. I will accept that his math was appropriate
12 for what he was -- the formulas he was calculating.

13 Q. Now, do you think that the \$45 per megawatt
14 hour amount is an unreasonably low estimate of what
15 ComEd would have paid for electricity in 2004 if it
16 had paid market prices for its supply?

17 A. I haven't done the analysis to see what
18 market prices otherwise would have been in 2004.

19 Q. So you don't know whether that is low or
20 high?

21 A. That is correct.

22 Q. And do you think that the \$45 per megawatt

1 hour price is an unreasonable estimate for what
2 ComEd will pay for electricity Post-2006 if it pays
3 market prices?

4 A. We won't know until we run the auction.

5 Q. So you don't know whether it is reasonable
6 or unreasonable?

7 A. That is correct.

8 Q. Now, will you also refer to current
9 Commonwealth Edison purchases with various vendors
10 at market prices as being no different from
11 purchasing electricity at market prices. Now, isn't
12 it true that when Commonwealth Edison enters into
13 bilateral contracts with these vendors, ComEd uses
14 its knowledge of its needs and its understanding of
15 the market for the particular item being obtained?

16 A. Yes.

17 Q. Now, on page 6 of Mr. Effron's testimony
18 did he calculate that Exelon Generation earned a
19 return on equity of 20.6 percent in 2004?

20 A. I recall that's his calculation.

21 Q. And you did not testify to any errors in
22 his calculation, isn't that correct?

1 A. That's right.

2 Q. And did he describe this as earning huge
3 profits?

4 A. I don't recall. I am sure his testimony
5 speaks for itself.

6 Q. Do you recall whether he described the
7 return of 20.6 percent as being not less than
8 compensatory?

9 A. I recall his using those words.

10 Q. Do you know if he offered any other
11 characterization of that return?

12 A. I think the words you just indicated are
13 the ones that stand out.

14 Q. Do you agree with Mr. Effron that a return
15 on equity of 20.6 percent is not less than
16 compensatory?

17 A. I guess I am going to have to ask what he
18 means by compensatory. He didn't do any calculation
19 with respect to the opportunity costs that Exelon
20 Generation might have incurred by serving
21 Commonwealth Edison at the average price that he
22 calculated. So I am not sure what compensatory

1 really means in that regard.

2 Q. On page 19 you say that Mr. Effron's
3 calculations provide no basis for concluding that
4 the reported Exelon Generation profits are due to
5 its contract to serve ComEd. That's on page 19, 428
6 through 431. Now, do you recall that Dr. Hieronymus
7 criticized Dr. Steinhurst for ignoring actual
8 revenues in his testimony?

9 A. I believe I recall that, yes.

10 Q. And would you agree with me that
11 Mr. Effron's calculations take into account the
12 actual revenues received at Exelon Generation in
13 2004?

14 A. I believe he makes a calculation using
15 actual revenues, yes.

16 Q. And so these actual revenues include
17 revenues received from Commonwealth Edison for
18 actual sales to Commonwealth Edison for supply, is
19 that correct?

20 A. That's my understanding, yes.

21 Q. And the figures that he discusses also
22 included actual sales to other customers of Exelon

1 Generation in 2004, do you recall that?

2 A. I believe he looked at total revenues to
3 Exelon Generation.

4 Q. And would you agree with me that the size
5 of the actual sales from Exelon Generation to
6 Commonwealth Edison are reflected in Exelon's
7 return?

8 A. Yes.

9 Q. And isn't it correct that if the size of
10 the sales to ComEd and to the other parties remain
11 the same, but the prices change, the changed in
12 Exelon's return would be as shown in Mr. Effron's
13 testimony?

14 A. I think Mr. Effron's calculation is
15 somewhat simplistic because we don't know what would
16 have caused those prices to be different.
17 Therefore, they might have affected the underlying
18 cost to Exelon Generation of its portfolio. Exelon
19 does not own physically all the resources that it
20 needs to make sales. So its costs might have gone
21 up in direct relation to the price increase that
22 Mr. Effron would like to impute to its sales. So I

1 believe that's where his analysis falls apart in
2 that regard.

3 Q. But his analysis assumed all else held the
4 same, isn't that correct?

5 A. I believe that's what his analysis assumed.
6 However, I think that's an unrealistic assumption.

7 Q. Okay. But with that assumption his
8 calculation is correct, isn't that right?

9 A. I believe he can do algebra.

10 Q. So you found no errors?

11 A. No.

12 Q. And you did not identify specifically any
13 costs that you believed would change other than what
14 you just testified today?

15 A. No.

16 Q. Are you aware that Mr. Effron used Exelon's
17 reported cost of purchased power as well as its own
18 cost of generation in his analysis?

19 A. As I recall he did use Exelon documents for
20 the source of his numbers.

21 Q. So would you agree with me then that he
22 used the current cost of purchased power as well as

1 Exelon's cost in making his --

2 A. For that specific calculation. It is when
3 he does his sensitivity analysis that the logic
4 doesn't follow.

5 Q. His sensitivity analysis?

6 A. By increasing the price of power and then
7 trying to impute a different return to ExGen.
8 Again, we need to analysis the underlying cost to
9 ExGen that might have also been altered.

10 Q. But he assumed everything would be the
11 same, correct?

12 A. Yes.

13 Q. You say on page 19, lines 443 to 445, that
14 there is nothing wrong with Exelon Generation or any
15 supplier earning a profit when it accepts risks.
16 And you would agree with me that Mr. Effron did not
17 testify that there was anything wrong with Exelon
18 Generation earning a profit, right?

19 A. I don't believe he used those words, no.

20 Q. And Mr. Effron also did not say anywhere in
21 his testimony that the Commission should penalize
22 Commonwealth Edison by denying it recovery of actual

1 costs?

2 A. That is correct.

3 Q. So that was your interpretation of his
4 testimony?

5 A. My interpretation of his testimony is that
6 he was trying to infer that any increases in market
7 prices were related to the choice of a declining
8 clock auction as a procurement methodology and that
9 somehow that methodology led to some unfair results
10 to consumers.

11 Q. So that's your interpretation?

12 A. That's my interpretation and it is where I
13 found the flaw in his logic with respect to his
14 ratepayer impacts. Ratepayers didn't pay the costs
15 of the 2004 contract.

16 Q. Okay. At this point there is no question
17 pending. Now, on page 20, lines 467 to 469, you say
18 to the extent that Mr. Effron implies that Exelon
19 Generation's earnings indicate that it is collecting
20 unjust or unreasonable rates, FERC has not agreed?

21 A. Yes.

22 Q. Now, you would agree with me that Mr.

1 Effron did not say anywhere in his testimony that
2 Exelon Generation has been collecting unjust or
3 unreasonable rates?

4 A. Again, he didn't use those exact words, no.

5 Q. Okay. Was it your conclusion that the
6 return that he identified, implies or indicates that
7 Exelon Generation is collecting rates that are
8 unjust or unreasonable?

9 A. I think there is a silent inference, given
10 his pages and pages of testimony in this regard,
11 that there is somehow something wrong with the
12 numbers. Hence, I have testified that in fact there
13 is nothing wrong with earning a profit on
14 generation.

15 Q. You would agree with me that Mr. Effron's
16 testimony is ten pages total?

17 A. I take Mr. Effron's testimony and I believe
18 he had --

19 Q. Is his written testimony ten pages?

20 A. I believe he had two testimonies; didn't he
21 have direct and rebuttal?

22 Q. No.

1 A. Okay, there is so many witnesses.

2 MS. SATTER: Okay, I have no further questions.

3 JUDGE WALLACE: All right. Let's take a
4 five-minute break to allow Ms. Juracek to have a
5 drink of water.

6 (Whereupon the hearing
7 was in a brief recess.)

8 JUDGE WALLACE: Let's go back on the record.
9 Mr. Augspurger, go ahead.

10 MR. AUGSPURGER: Thank you, Your Honor. I
11 would like to begin by asking that an exhibit be
12 marked for identification as the joint exhibit of J.
13 Aron Company and Morgan Stanley Capitol Group, Inc.

14 (Whereupon J.Aron and
15 MSTC Cross Exhibit 1
16 was marked for purposes
17 of identification as of
18 this date.)

19 MR. AUGSPURGER: Your Honor, I have marked
20 this. This has been marked Exhibit 1 of J. Aron and
21 Morgan Stanley Capitol Group, Inc. This contains a
22 responsive question submitted to Commonwealth

1 Edison. I have discussed this with counsel for
2 Commonwealth Edison and we have reached an agreement
3 that Ms. Juracek could testify as to the contents of
4 this discovery response and adopt it as her own.
5 And on that basis I would seek to move for this to
6 be admitted into evidence.

7 JUDGE WALLACE: Why don't you -- we still have
8 someone in Chicago so if you could speak into a
9 microphone. All right. Let's call this -- we need
10 some smaller numbers here. Let's call it MSCG Cross
11 Exhibit 1, and Mr. Rippie has no objection to this?

12 MR. RIPPIE: I do not.

13 JUDGE WALLACE: All right. J. Aron and MSCG
14 Cross Exhibit 1 is admitted.

15 (Whereupon J.Aron &
16 MSCG Cross 1 was
17 admitted into
18 evidence.)

19 MR. Augspurger: And, Your Honor, based on a
20 that stipulation I have no questions for this
21 witness.

22 JUDGE WALLACE: Okay. Mr. Feeley.

CROSS EXAMINATION

BY MR. FEELEY:

Q. Good afternoon, Ms. Juracek. My name is John Feeley and I represent the Staff.

A. Good afternoon.

Q. I direct your attention to your surrebuttal testimony, page 32, and in particular at lines 723 through 725.

A. Yes.

Q. In your testimony you say that ComEd does not expect that it would move to establish less restrictive credit requirements without conferring with the ICC or ICC Staff. In view of this fact ComEd has removed the provisions from the draft SFC and I have a series of questions for you on that. Can you please describe in detail ComEd's proposed procedure for discussing with the ICC or the ICC Staff any proposal to reduce the SFC credit requirements?

A. I am not aware that we developed a specific procedure or proposal in which to conduct that discussion. I would imagine that we would follow

1 our normal communications channel with you and set
2 up a meeting with Staff to discuss our concerns.

3 Q. Should ComEd move to establish less
4 restrictive credit requirements, do you know how
5 long the ICC or ICC Staff would have to review any
6 proposed reduction in credit requirements?

7 A. No, I don't know, and again we took that
8 provision out of the SFC so it removed that
9 discretion from ourselves. So if we needed to
10 reduce the credit requirements, it would be a change
11 to the SFC and we would need to discuss with you the
12 best way to do it.

13 Q. Do you know what input ComEd would seek
14 from the ICC or ICC Staff regarding any reduction?

15 A. I am aware -- I am not an expert in this
16 area but I am aware that Staff has experts in this
17 area as well as ComEd and that we would engage in a
18 discussion with those experts and take it from
19 there. It was so hypothetical which is why we ended
20 up taking it out.

21 Q. Okay. I have another line of questions for
22 you. If you could go to page 24, your Exhibit 17.2?

1 A. Okay.

2 Q. In particular lines 536 to 537, you state
3 that all ComEd has ever wanted to accomplish through
4 the accuracy of insurance mechanisms proposed in
5 Rider CPP is to recover our true costs, no more and
6 no less. In stating that all ComEd ever wanted to
7 recover was its true costs, do you mean the true
8 costs as determined by ComEd?

9 A. Basically, the true costs, and I think
10 there might be an issue here that somehow ComEd
11 might have made an error in calculating those costs.
12 And we don't intend to profit from those errors, so
13 to speak.

14 Q. Would you agree that reasonable differences
15 of opinion could occur between Staff or another
16 party and ComEd as to ComEd's determination of true
17 costs?

18 A. Yes.

19 Q. So, and you would agree that there is --
20 strike that. Do you have ComEd Exhibit 13.1
21 original sheet number 269?

22 A. I don't, no.

1 MR. FEELEY: May I approach?

2 JUDGE WALLACE: Yes.

3

4 BY MR. FEELEY:

5 Q. Have you had a chance to review ComEd
6 Exhibit 13.1 original sheet 269?

7 A. Yes, but if you could tell me where the red
8 line is coming from.

9 Q. This is ComEd's exhibit?

10 A. Okay. So we proposed changes to CPP after
11 the original filing. Okay, yes, I have read the
12 language.

13 Q. Referring to that exhibit original sheet
14 number 269, ComEd has agreed that for questions and
15 disputes regarding the arithmetical accuracy of
16 charges on customers' bills, the ICC should not be
17 divested of its jurisdiction and authority to
18 investigate informal proceedings, is that correct?

19 A. That is correct.

20 Q. So is it your position that the ICC should
21 have some jurisdiction and authority to make sure
22 that the appropriate costs and revenues are

1 considered in the determination of their rate?

2 A. Yes.

3 Q. If you go to lines 541, and start at 541
4 and you go on in your answer starting at 546, is it
5 correct that you oppose Staff witness Knepler's
6 recommendation to delete certain language which
7 limits the Commission's oversight?

8 A. I think we took issue with Mr. Knepler's
9 language. However, I understand that we generally
10 agree in principle on what it is we are trying to
11 accomplish through our language.

12 Q. And would you agree that the issue is the
13 language on ComEd's original sheet number 269 and it
14 is specifically with respect to the -- with respect
15 to the first paragraph that's the second, third and
16 fourth sentence, that Mr. Knepler recommended be
17 deleted?

18 A. Yes.

19 Q. And with respect to the fourth paragraph,
20 the issue is the second, third and fourth and fifth
21 sentences that Mr. Knepler recommended be deleted?

22 A. Yes.

1 Q. Do you agree that the language in that
2 dispute makes clear that the rates calculated on
3 Rider CPP may go into effect without further review
4 by the Commission and that refunds are limited to
5 numerical errors and not after-the-fact inquiries?

6 A. I believe -- are you referring to
7 Mr. Knepler's language or our language?

8 Q. The language which Mr. Knepler recommended
9 be deleted from Rider CPP?

10 A. Right. Our intent was that it simply
11 allows for correction of arithmetical inaccuracies,
12 not for prudence.

13 Q. And are you aware of whether any similar
14 type of sentence has ever been included in any
15 tariffs of ComEd previously, in any other previously
16 filed tariffs?

17 A. I don't recall specifically what might be
18 in the MVI tariffs which also involve calculation.
19 But I have no first-hand knowledge that this
20 language appears in any other tariff.

21 Q. Are you aware of whether any rate that
22 ComEd has offered has not been allowed to go into

1 effect by the Commission or any other entity?

2 A. If I understand your question, you have
3 asked me if ComEd has ever proposed rates that the
4 Commission has not allowed to go into effect.

5 Q. Yes.

6 A. I am thinking of the tariff, the rider we
7 had ages ago, that was contract-based rates and it
8 went into litigation and the resulting tariff was
9 not what we had proposed. I am sure there have been
10 instances where ComEd made a proposal and the
11 Commission didn't allow it to happen.

12 Q. Direct your attention to lines 550 through
13 552, your surrebuttal.

14 A. Okay.

15 Q. And at those lines you indicate that if
16 this sentence is deleted, parties may argue that
17 retrospective prudence reviews are required, is that
18 your testimony there?

19 A. I think we believe that our language
20 originally prevented the outcome that might result
21 in prudence, retrospective prudence reviews. So
22 that's what we were trying to prevent.

1 Q. So then the issue is the deletion of the
2 sentence -- strike that. So by including this
3 sentence you are attempting to limit the
4 Commission's and any other entity's authority
5 regarding the termination of the prudence of the
6 auction process, correct?

7 A. I think we are simply trying to be as clear
8 as possible what our intent was, that this was a
9 mathematical check, not a prudence check on the
10 procurement.

11 Q. Is it possible that ComEd would agree to
12 delete the sentence at issue and replace it with a
13 sentence that the auction process as properly
14 enacted under the provisions of the tariff would be
15 considered prudent and that neither the Commission
16 nor any other entity can pursue issues of prudence
17 of the auction process in any future regulatory
18 proceeding?

19 A. Well, I have not been party to discussions.
20 My understanding is representatives of the company
21 and Staff have been discussing suitable replacement
22 language. And our position is that we would like to

1 reach an agreement with Staff on the appropriate
2 language.

3 Q. The language which Mr. Knepler proposed to
4 be eliminated was the following: "The company shall
5 not be required to obtain any consent or other
6 approval, whether prospective, contemporaneous or
7 retrospective from the ICC or any other entity in
8 order to issue bills containing such retail supply
9 charges or in order to collect such retail supply
10 charges." What is the intent of that sentence from
11 ComEd's point of view? Why did ComEd -- why does
12 ComEd want that sentence included? What is it
13 intended to accomplish?

14 A. You know, that sentence does not appear on
15 the sheet you gave me. So I am having trouble
16 putting it into context here.

17 Q. You responded to Mr. Knepler's direct
18 testimony, correct?

19 A. Right, but I am trying to figure out the
20 relevance between that and the exhibit you handed
21 me.

22 Q. I am going back to -- in Mr. Knepler's

1 testimony he recommended that certain sentences be
2 deleted from ComEd's tariffs. And what I read to
3 you was one of the sentences, the first paragraph,
4 was from the first paragraph of original sheet
5 number 269.

6 A. I am sorry. It is late in the day and I
7 thought what you just read me is not on sheet 269.

8 Q. No, I am talking about the sentence that
9 ComEd originally proposed for this tariff.

10 A. Yes.

11 Q. And Mr. Knepler recommended that it be
12 deleted.

13 A. Okay.

14 Q. Do you have a copy of Mr. Knepler's? Do
15 you recall Mr. Knepler's testimony?

16 A. I don't have it with me, no.

17 Q. But you responded to the testimony of Mr.
18 Knepler, correct?

19 A. Right.

20 Q. And he recommended that a section from the
21 first paragraph of ComEd's original sheet number 269
22 be deleted?

1 A. Yes.

2 Q. I read that sentence to you?

3 A. Yes.

4 Q. And my question to you is, what was that
5 sentence intended to accomplish?

6 A. Would you read it one more time, please?

7 Q. "The company shall not be required to
8 obtain any consent or other approval, whether
9 prospective, contemporaneous or retrospective from
10 the ICC or any other entity in order to issue bills
11 containing such retail supply charges or in order to
12 collect such retail supply charges"?

13 A. The intent there was once we run the
14 auction, we run the auction clearing price through
15 the print out. We would have charges which we could
16 then charge customers without any subsequent
17 Commission review or approval of those charges in a
18 prudence sense. I think since then this paragraph
19 indicates that we recognize that mathematical
20 accuracy is an issue and we do want to work with
21 Staff to insure that we are accurately calculating
22 numbers.

1 Q. And do you recall Mr. Knepler also
2 recommended that a sentence similar to that be
3 stricken with regard to the AAF?

4 A. Yes.

5 Q. And I will read that sentence to you. It
6 stated that, "The company shall not be required to
7 obtain any consent or other approval whether
8 prospective, contemporaneous or retrospective from
9 the ICC or anyone other entity in order to issue a
10 bill containing any such stated AAF ordered or in
11 order to collect such AAF." And what is the intent
12 of that sentence?

13 A. The intent again is not to have any
14 regulatory lag created by the need for a formal
15 review, that we would do the calculations and pass
16 the charges through to customers.

17 Q. You are familiar with Rider CPP, correct?

18 A. Somewhat, not in all its intimate detail.

19 Q. Do you know how many times the word
20 "prudence" or the words "prudence review" appears in
21 Rider CPP?

22 A. No.

1 Q. Would you agree subject to check that the
2 word "prudent" or "prudence review" does not appear
3 in Rider CPP?

4 A. Sure.

5 Q. And is it correct that in your testimony
6 you do not cite any section of the Public Utilities
7 Act which would bar the Commission from conducting a
8 retrospective review of the prudence of the auction
9 process upon receiving a filed complaint or on its
10 own motion?

11 A. That is correct. I don't cite the Act.

12 Q. If a complaint were filed with the
13 Commission charging imprudence with the auction
14 process, do you believe the Commission would have
15 the duty and obligation to investigate the matter?

16 MR. RIPPIE: I would have to note the objection
17 to the extent it calls for a conclusion. She can
18 answer it to the extent she has a lay understanding,
19 but I think that question didn't call for that.

20 A. We would have to look at the nature of the
21 objection.

22 Q. If the Commission on its own motion entered

1 an order for the retrospective review of the
2 prudence of the auction process, what part of Rider
3 CPP would prevent the Commission from going forward
4 with that investigation?

5 A. Basically, the first paragraph on sheet
6 number 269.

7 Q. Are you familiar with Ameren Company's
8 filing in its procurement packet?

9 A. In a general sense, yes.

10 Q. Do you know whether Ameren proposes in its
11 tariffs any similar type of language?

12 A. I don't know.

13 Q. Direct your attention to lines 546 to 547.
14 You state there that the consequences of these
15 seemingly minor tariff revisions cannot be
16 understated. They would be fatal to the effective
17 operation of the auction process and are of
18 sufficient importance that ComEd cannot support the
19 process without them. When you use the phrase
20 "would be fatal to the effective operation of the
21 auction process," what do you mean by that phrase?

22 A. By that I mean this puts a bid regulatory

1 out on the whole auction process and I would think
2 it would be a great concern to the suppliers who may
3 choose to not even participate in an auction with
4 that type of a post-prudence review. And in fact
5 would make it impossible for this procurement
6 mechanism to work.

7 Q. Is it your testimony that if the Commission
8 were to accept Staff's language modifications,
9 original sheet number 269, that ComEd would not
10 participate in the auction process and would
11 continue with its existing rates as they are today?

12 A. That seems to be a compound question. I
13 don't think we could live with keeping existing
14 rates as they are today, no.

15 Q. Well, we will go with the first part. If
16 the Commission were to accept Staff's modifications,
17 would ComEd not go forward with the auction process?

18 A. If by Staff's modifications you mean the
19 language that Mr. Knepler wanted to strike?

20 Q. Yes.

21 A. We would need some replacement language.
22 And as I indicated earlier, I believe ComEd people

1 are working with Staff people to come up with
2 appropriate language that stops short of a prudence
3 review but allows for a review for mathematical
4 accuracy. But we could not go forward as I testify
5 if in fact there was a post-auction prudence review.

6 Q. At lines 548 to 549 you state that the
7 proposed deletion should and if the auction process
8 is to be successful must be rejected. With respect
9 to an auction under ComEd's proposal, who has the
10 authority to declare an auction unsuccessful or a
11 failure?

12 A. I believe in the first instance the auction
13 manager does, and then I believe based on the weight
14 of the auction manager's information provided to the
15 Commission as well as the Staff's review, I think
16 ultimately the Commission can make that declaration.
17 Mr. McNeil is the expert on all those screens,
18 however. But I believe ultimately it is the
19 Commission.

20 Q. Do you know whether ComEd has the authority
21 under its proposal to declare an auction
22 unsuccessful or a failure?

1 A. I don't believe we do.

2 Q. Direct your attention to still Exhibit
3 7.0, lines 550 to 552, actually 550 through 555. Do
4 you see your testimony there?

5 A. Yes.

6 Q. Can you point to specific language, to
7 specific testimony from Mr. Knepler, where he
8 proposes a prudence review of the auction process?

9 A. I don't believe he specifically recommends
10 a prudence review. But our concern had been that
11 his language deletion left the door open that others
12 might argue one might be necessary or that one would
13 be allowed.

14 Q. Can you point to anywhere in Mr. Knepler's
15 testimony where he proposed that ComEd be denied
16 full recovery of its auction costs?

17 A. No.

18 Q. And can you cite to anyplace in any other
19 Staff witness's testimony where they proposed that
20 ComEd be denied a full recovery of its auction
21 costs?

22 A. Not to my knowledge.

1 Q. Direct your attention to lines 563 through
2 566. In particular your testimony starting with "if
3 suppliers believe" going on through the end of line
4 566.

5 A. Yes.

6 Q. Does ComEd need Commission approval to make
7 payments to its suppliers?

8 A. No. Well, it needs Commission approval of
9 the process which would give rise to the need to
10 make those payments. But, no, specific payments
11 don't need to be approved by the Commission.

12 Q. And going back to lines 552 through 555, a
13 few more questions on that. You refer to Mr.
14 Knepler and that he recently candidly admitted that
15 if his proposed deletions are accepted, the
16 limitation on retroactive hindsight changes to
17 charges collected by ComEd from retail customers
18 used by ComEd to pay suppliers will be tripled, and
19 then there is a cite to a data request, ComEd to
20 Staff 3.35?

21 A. Yes.

22 Q. Do you have a copy of that data request

1 response?

2 A. No.

3 Q. If you could review the request and
4 response that Mr. Knepler provided?

5 A. Okay.

6 Q. Could you point to me where in that
7 response it could be inferred that Mr. Knepler made
8 such a candid admission?

9 A. The answer. "If the reference language is
10 removed, the ICC would not be barred from conducting
11 a retrospective review of the prudence of ComEd's
12 decision to conduct the procurement, and if the ICC
13 found imprudence from ordering refunds, unless there
14 is language in the tariff or in the order providing
15 that for the prudence of the decision to conduct the
16 procurement, a full requirements electric supply had
17 been predetermined." So basically he is saying if
18 it is not in the tariff, it needs to be in the
19 order.

20 MR. FEELEY: One second. That's all I have.
21 Thank you, Ms. Juracek.

22 JUDGE WALLACE: Mr. Townsend?

CROSS EXAMINATION

BY MR. TOWNSEND:

Q. Good evening, Ms. Juracek. Chris Townsend appearing on behalf of the Coalition of Energy Suppliers. If you could please turn to your rebuttal testimony at lines 218 to 226, let me know when you are there?

A. Okay.

Q. At lines 218 to 219 you indicate that some proposals lack the track record that ComEd feels is required, is that correct?

A. Yes.

Q. What type of track record does ComEd believe is required?

A. I think some success with use of the product and with sufficient certainty to allow us to move forward to do the same thing in Illinois.

Q. And similarly at line 221 you talk about tried and true mechanisms?

A. Yes.

Q. Why is it important that the Commission approve tried and true mechanisms?

1 A. This isn't the time to experiment. We
2 basically do need to go out for our full
3 requirements supply beginning 2007 and it makes
4 sense to use state of the art best methods that are
5 going to get us the results that we all want.

6 Q. At lines 219 to 220 you indicate that ComEd
7 has proposed mechanisms and procedures which have
8 been implemented in the past and have track records
9 of success?

10 A. Yes.

11 Q. What mechanisms and procedures are you
12 referring to?

13 A. Basically the declining clock vertical
14 tranche auction.

15 Q. I am sorry. It says ComEd has consistently
16 proposed mechanisms and procedures which have been
17 implemented in the past. Were you talking about
18 within this proceeding or when you say consistently
19 did you mean in other proceedings?

20 A. Because my testimony showed up first in the
21 rebuttal phase of this docket, it really refers to
22 this docket and this whole Post-'06 investigation.

1 Q. And you say that they have had track
2 records of success. From whose perspective have
3 those mechanisms had success?

4 A. I think from record participants and
5 regulators and consumers generally. The auction has
6 been done in New Jersey now four times, going on
7 five times, and that is a fairly significant track
8 record.

9 Q. At lines 225 to 226 you indicate that there
10 is an effective means annually for considering new
11 or experimental auction improvements. Could you
12 explain what that procedure is or is there another
13 witness that would be better to ask that question
14 to?

15 A. I can discuss it at a high level and then I
16 will defer to Mr. McNeil for a more complete
17 discussion. But essentially we are providing for a
18 post-auction workshop where parties can get
19 together, analyze what happened in the prior
20 auctions, and make suggestions for improvements in
21 the next procurement.

22 Q. And at that point ComEd likewise could be

1 making suggestions of its own for additional
2 improvements, correct?

3 A. When I say parties, I generally include
4 ComEd, Staff, suppliers, customer representatives,
5 etc.

6 Q. If you could turn to your surrebuttal
7 testimony, specifically lines 636 to 650, please?

8 A. Yes.

9 Q. And there you talk about you respond to the
10 coalition proposal that there be a separate
11 proceeding to consider the ways in which ComEd as an
12 IDC, an integrated distribution company,
13 communicates with its customers, correct?

14 A. Yes.

15 Q. Could you explain at line 641 what you mean
16 by the phrase "need for communication," specifically
17 who needs the communication?

18 A. Physically, the need for communication with
19 our customers of what is happening. There is a
20 complete change in the electricity regime being
21 proposed here and customers are going to need some
22 heads up on what's going to be happening to their

1 electric bill, for example. So we have a very short
2 time frame here on instituting a formal proceeding.
3 It may not get us communication materials in time to
4 be effective. It is a change management process.

5 Q. Do you know how the costs associated with
6 the communication will be accounted for?

7 A. Specifically, no.

8 Q. Are you familiar with the IDC rules that
9 prohibit IDC's from advertising with their
10 generation component?

11 A. Yes.

12 Q. What is your understanding of the purpose
13 of the IDC rules that prohibit IDCs from advertising
14 with their commodity component?

15 A. The purpose of those rules is to prevent an
16 IDC, which is what Commonwealth Edison is, from
17 appearing to be competing with RESs for the
18 commodity portion of customer supply. So we need to
19 walk a fine line between information and what might
20 appear to be active competition.

21 Q. Would you agree that it is important that
22 ComEd's customers receive communication regarding

1 the language their rate options are going to change
2 after the transition period?

3 A. Yes.

4 Q. Would you agree that it is important for
5 ComEd's customers to receive communication regarding
6 the language rate structures are going to change
7 after the transition period?

8 A. Yes.

9 Q. Has ComEd begun preparing material it
10 intends to distribute to customers regarding the
11 language their rate options and rate structures are
12 going to change after the transition period?

13 A. I believe it has but I have no firsthand
14 knowledge of those specific materials.

15 Q. Is there a witness that will be testifying
16 that would have that knowledge?

17 A. I will defer to Mr. McNeil.

18 Q. Do you know if ComEd has a plan in place to
19 develop that material?

20 A. I don't know that.

21 Q. Do you know what message will be contained
22 in that material?

1 A. No.

2 Q. Has ComEd met with Staff or other
3 interested parties to discuss either the form or the
4 substance of that material?

5 A. I don't know.

6 Q. Again, would that question be more
7 appropriately addressed to Mr. McNeil?

8 A. I would say he would be an appropriate
9 witness to ask that of.

10 Q. Is it ComEd's position that neither Staff
11 nor any other parties should be able to review the
12 material prior to ComEd distributing it?

13 A. I would say there is no requirement that
14 Staff or any other party review it, nor would I want
15 to start down a path in which ComEd's own first
16 amendment rights are somehow being impinged upon.
17 That being said, I am sure all parties will want to
18 be assured that our communication materials were
19 within the IDC rules. So I would imagine that we
20 would continue in some informal way of sharing the
21 materials with others.

22 Q. Would ComEd be willing to agree to

1 establish an informal process for parties and Staff
2 to be able to review those materials?

3 A. I am not prepared to agree to that now on
4 the stand. But it is something that we will take
5 under advisement.

6 Q. Has the Commission previously reviewed
7 electric utilities' communications regarding
8 fundamental changes in the Illinois retail electric
9 market?

10 A. Yes. There was quite a targeted Commission
11 effort with respect to customer choice
12 communications which was actually mandated by the
13 Restructuring Act. So there, there was a statutory
14 authority that required it.

15 Q. And there the Commission did review the
16 utilities' materials, correct?

17 A. The Commission issued its own materials and
18 I do know that a team of stakeholders participated
19 in preparing those materials. I don't recall
20 specifically how much of ComEd's own materials were
21 actually subject to those review. What I am
22 referring to is the mandated Commission

1 communications effort.

2 Q. And likewise for the post-transition period
3 it is possible that the communication could come
4 from someone other than ComEd, correct?

5 A. Sure.

6 MR. RIPPKE: No further questions.

7 JUDGE WALLACE: All right. Let's go off the
8 record.

9 (Whereupon there was
10 then had an
11 off-the-record
12 discussion.)
13 (Whereupon the hearing
14 in this matter was
15 continued until August
16 30, 2005, at 9:00 a.m.
17 in Springfield,
18 Illinois.)

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